88-1058

No. .....

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1988

—o—

WILLIAM D. TREEBY AND
STATE FARM FIRE AND CASUALTY COMPANY,

Petitioners,

vs.

MARVIN GORMAN AND
MARVIN GORMAN MINISTRIES, INC.,

Respondents.

—o—

PETITION FOR A WRIT OF CERTIORARI TO THE LOUISIANA COURT OF APPEALS FOR THE FOURTH CIRCUIT

—o—

PETITION FOR WRIT OF CERTIORARI

—o—

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QUESTIONS PRESENTED FOR REVIEW

I.

Whether state civil courts have subject matter jurisdiction to review actions regarding the discipline and dismissal of a minister by his religious institution and its members in accordance with that institution's Constitution and doctrinal Bylaws.

II.

Whether a corporation has a cause of action in defamation for allegedly defamatory statements directed at its officer and founder.

PARTIES TO THE PROCEEDINGS

Petitioners (defendants below) are William D. Treeby ("Treeby") and State Farm Fire and Casualty Company ("State Farm"), whose parent company is State Farm Mutual Automobile Insurance Company. State Farm has no affiliates, subsidiaries or wholly owned subsidiaries.

Respondents (plaintiffs below) are Marvin Gorman ("Gorman") and Marvin Gorman Ministries, Inc. ("MGM"). MGM has no parent company, affiliates, subsidiaries or wholly owned subsidiaries.

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OPINIONS BELOW

The opinion of the Louisiana Court of Appeals for the Fourth Circuit is reported at 524 So.2d 915 (La. App. 4th Cir. 1988). The Court denied petitioners' petition for rehearing on May 11, 1988. The Louisiana Supreme Court denied the application of the petitioners for a Writ of Certiorari on September 23, 1988 and denied a stay of the Fourth Circuit's judgment pending application for a Writ of Certiorari to this Court on October 14, 1988.

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JURISDICTION

The jurisdiction of this Court to review the judgment of the decision of the Louisiana Court of Appeal on petition for certiorari rests upon 28 U.S.C. Section 1257(3).

———o———

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the First Amendment to the United States Constitution, which provides:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

———o———

STATEMENT OF THE CASE

The Assemblies of God Church ("AG") is a hierarchical fundamental Christian sect, governed by a national General Council and state level District Councils. This litigation originates out of the actions and circumstances surrounding the dismissal of Marvin Gorman from the list of recognized ministers of the AG for conduct unbecoming to a minister.

In 1956, Gorman became a licensed minister of the AG, credentialed by the Louisiana District Council and the General Council of the AG. At the time of the events at issue, Gorman was the pastor of the First Assembly of God Church in New Orleans, which is affiliated with the Louisiana District Council of the AG. Furthermore, he was a member of the Executive Presbytery, a thirteen member board which rules the General Council of the AG. Gorman was also the founder and president of his television ministry, Marvin Gorman Ministries, Inc.

In his petition, Gorman admits having committed an immoral act with one woman only, but Gorman and MGM claim that William D. Treeby and others are responsible for certain statements and publications to the effect that Gorman was guilty of more than one immoral affair.

Petitioner, Treeby, is a member and the secretary of the Board of Directors of the Lakeview Christian Center ("Lakeview"), a local AG church which is also a defendant in this litigation. Furthermore, Treeby is a member of the Board of Directors of Jimmy Swaggart Ministries, Inc. ("JSM") which is affiliated with the General Council

of the AG. He is also Swaggart's personal attorney and has acted as legal council to JSM and the Louisiana District Council of the AG.

On July 15, 1986, Gorman was confronted with allegations of immoral conduct by Treeby and others. At that meeting, Gorman admitted to what is euphemistically called "moral failures" with two women. He was also confronted with information of "moral failures" with women other than the two alluded to above and was urged to leave the ministry and to seek rehabilitation. Gorman refused. The next day, apparently having changed his mind, Gorman resigned from the First Assembly of God Church. Subsequent thereto, church officials read a statement to Gorman's congregation to explain his resignation (46a-47a). Gorman declares that this statement, which accused Gorman of several immoral affairs, was prepared by Treeby and others.

Petitioners aver that Gorman's resignation was not, and could not be, accepted by the Louisiana District Council for the AG. According to both the General Council and District Council of the AG Bylaws, a minister whose "moral failures" warrant disciplinary action cannot voluntarily resign (62a, 71a).

In the days that followed, the Louisiana District Council of the AG launched disciplinary proceedings against Gorman, as per its codified ecclesciastical laws. His participation was requested but he declined. Ultimately, and in part due to Gorman's refusal to participate in these church proceedings, the General Council of the AG had no choice but to formally dismiss Gorman as a minister on August 14, 1986.

On August 20, 1986, Swaggart wrote a letter to Cecil Janway ("Janway"), the Superintendent of the Louisiana District of the AG, in which Swaggart urged Janway to handle Gorman's case as he would any other minister's in the district (48a-50a).

On September 2, 1986, a second statement was read to Gorman's former congregation by Janway (51a-55a). The statement accused Gorman of several immoral affairs and purported to clarify inconsistent statements and inaccurate explanations surrounding his dismissal. Gorman avers that this statement contained defamatory language and that it was authored and drafted by Treeby and others. He further claims that the statement was announced to all Louisiana AG congregations and was mailed to all members of the Louisiana District Council, pastors of different denominations, missionaries serving abroad, and to the general public.

Yet, Gorman and MGM alleged that Gorman was a very well-liked and prominent television evangelist whose television ministry was broadcast throughout the United States. Consequently, his actions and statements by or about him were likely to be reported in the media, both locally and nationally. While Gorman enjoyed popularity, this publicity was sought. Once in disfavor, this publicity was shunned. However, a public person who takes advantage of the media must also suffer its disapprobation.

Gorman and MGM brought suit in the Louisiana Civil District Court for the Parish of Orleans on March 24, 1987 alleging defamation and libel per se, invasion of privacy and the intentional infliction of emotional distress. The respondents also alleged that MGM was damaged as

a result of petitioners' actions. However, the pleadings demonstrate that none of the alleged defamatory statements made by the petitioners refer to any misconduct by the corporation itself.

Among the exceptions filed by various defendants, including Treeby, was an exception that MGM had no cause or right of action to assert these claims and exceptions of lack of subject matter jurisdiction. Some of these exceptions were sustained on June 8, 1987 and the plaintiff's claims were dismissed.

While the aforementioned exceptions were under submission, the plaintiffs, in an effort to overcome pleading deficiencies, filed a First Supplemental and Amending Petition on May 22, 1987. Again, all the defendants filed exceptions of lack of subject matter jurisdiction and exceptions of no cause or right of action (6a-20a). On August 31, 1987, the exceptions of lack of subject matter jurisdiction were sustained and all other exceptions were dismissed as moot (21a-22a).

State Farm Fire and Casualty Company was named as a defendant in plaintiffs' Second Supplemental and Amending Petition as Treeby's liability insurer.

On August 11, 1987, Gorman and MGM appealed and on April 22, 1988, the Louisiana Court of Appeal for the Fourth Circuit reversed the decision of the trial court, holding that civil courts had subject matter jurisdiction over this suit and that MGM could assert a claim in defamation based on defamatory statements allegedly made against Gorman personally (23a-41a). The application for rehearing filed by petitioners was denied by the Fourth Circuit on May 11, 1988 (42a). Subsequently, on

September 23, 1988, the Louisiana Supreme Court denied petitioners' petition for a Writ of Certiorari to review the decision of the Fourth Circuit Court of Appeal (43a). On October 14, 1988, the Louisiana Supreme Court denied petitioners a stay of the Fourth Circuit's judgment pending application for a Writ of Certiorari to this Court (45a).

REASONS FOR GRANTING THE WRIT

I.

State civil courts do not have subject matter jurisdiction to adjudicate the propriety of a religious institution and its members to discipline and dismiss one of its ministers in accordance with that institution's Constitution and doctrinal Bylaws.

The Supreme Court has established definitively that civil courts cannot constitutionally interpret church doctrine or custom. *Presbyterian Church v. Mary E. Hull Memorial Presbyterian Church,* 393 U.S. 440, 89 S.Ct. 601 (1969).

In the April 22, 1988 opinion, the Appellate Court correctly noted that the authority of the civil courts to interfere with ecclesiastical matters or to interpret religious doctrine is substantially limited by the First Amendment to the United States Constitution and Article 1 Section 8 of the Louisiana Constitution (38a). Despite these acknowledgements, the Fourth Circuit not only interpreted but also rejected the AG church doctrine. In particular, the panel challenged the propriety of communications

about Gorman by different defendants after he attempted to resign from the AG and after he was dismissed as a minister.

The Court of Appeal also rejected the concept of the Universal Church of all Christians, a fundamental belief of the AG church established by its own AG Constitution and Bylaws. The Court cannot substitute its own concept of Christianity for that of the AG and its members without overstepping the boundaries of the First Amendment. Furthermore, the decision to dismiss Gorman as a minister and to disseminate the reasons for his dismissal to the Universal Church were taken in accordance with the AG Constitution and Bylaws as well as the teachings of Scripture. To allow Gorman to continue this suit against petitioners would necessarily require the District Court to interpret religious doctrine of the AG to determine how and to what extent the disciplinary proceedings were appropriate.

A. The Constitution and Bylaws of the Assemblies of God Church authorized the actions taken by the petitioners herein.

All of the statements and actions attributed to Treeby and others were made in strict accordance with the rules of the Church and in compliance with appropriate disciplinary procedure, even if those actions took place after Gorman's dismissal. Post-dismissal disclosures were part of the church discipline because the AG's disciplinary proceedings do not end at dismissal. The AG mandates that a church member's transgression be disclosed to his church, a fact that cannot be disputed by Gorman who, since 1956, agreed to abide by that mandate when he signed the "Cre-

dential Renewal'' form annually. By signing this form, Gorman renewed his promise to abide by the Constitution, Bylaws, and the sixteen "Fundamental Truths", all of which constitute the doctrinal foundation of the AG.

According to the Bylaws of both the General Council and the District Council, a minister must comply with the teachings of Scripture. The Bylaws state that "(a)ny conduct unbecoming to a minister or discretions involving morals" is a "cause" for disciplinary action (57a, 73a). A minister may resign from the ministry only if no charges have been filed against him (62a, 71a). If a minister intends to resign, his request will be granted without intervention only if he is found to be in good standing (62a, 72a).

Once a minister's guilt is established or if he declines to participate in the hearings, that minister can either be expelled from the fellowship through dismissal or restored to good standing through rehabilitation (61a, 63a, 66a, 77a). Gorman's purported resignation on July 16, 1986 could not be recognized by the AG because voluntary resignation is precluded by a minister whose conduct warrants disciplinary action. He was already confronted with charges of adultery and refused to participate in the Credentials Committee hearing.

The Court of Appeal concluded that the actions of the defendants were not protected, because Gorman's suit "alleges defamatory acts which occurred outside the AG after (Gorman) had resigned as a member of that denomination and had been formerly dismissed as one of its ministers" (39a). The Court gives no reasons why the AG's disciplinary actions should be judicially scrutinized merely because those actions occurred after Gorman's dis-

missal. One reason why Gorman's infractions were disclosed was to simply inform his congregation why he was dismissed. More importantly, the teachings of Scripture permitted, perhaps even encouraged, the post-dismissal statements of Gorman's adultery. According to Matthew 18, verse 15 through 17, if a sinner is confronted and refuses to confess his wrong, the church leader is obligated to make a public disclosure of those wrongs to the church in order to aid the sinner. This procedure is clearly based on religious belief, and the Free Exercise Clause of the First Amendment enables church elders to impose it. Flowers, *Can Church Discipline Members and Win in Court,* 27 Journal of Church and State, 483, 488 (1985). This concept of public disclosure is also emphasized by Apostle Paul in I Timothy 5:19-21: "Do not entertain an accusation against an elder unless it is brought by two or three witnesses. Those who sin are to be rebuked publically, so that the others may take warning. . ."

The Fourth Circuit lacks jurisdiction to interpret these passages from Scripture to determine whether the actions of the petitioners were in accordance with the teachings and internal procedures of the AG. Consequently, the Court erred in holding that the AG's disciplinary procedure should be open to judicial inquiry merely because those proceedings happened after Gorman's dismissal.

B. The Appellate Court's denial of the Assemblies of God's concept of the Universal Church violates the Free Exercise Clause of the First Amendment of the United States Constitution.

The publication of Gorman's transgressions beyond the AG church does not provide a state civil court with

subject matter jurisdiction. The Court of Appeal properly noted that the United States and Louisiana Constitutions substantially limit civil courts from interfering with the interpretation of religious doctrine. (38a). The panel further noted that courts can only get involved " . . . where religious doctrine is not involved." *Id.* Nevertheless, the Court rejected the long standing doctrine that the AG "Church" encompasses the Universal Church of all Christians, not just people who associate with AG's services (56a, 70a). To justify the rejection, the Court recharacterized the concept of the Universal Church as an "argument", not a fundamental doctrinal belief. (40a). The Appellate Court's protestations cannot cloak the fact that this belief is based not only on the AG Constitution but also on Scripture. The Appellate Court must not be allowed to interpose its religious theories for those of the denomination of which Gorman was an ordained minister.

The Court's rejection of the Universal Church doctrine results from a misinterpretation of that doctrine. The panel feared that accepting the concept "would lead to claims that any religious decisions of the Assemblies of God could be extended to any Christian." (40a). The AG does not claim to subject any and all Christians to its religious decisions. Instead, the AG submits only that those who are committed to AG doctrine must comply with its tenets. Thus, when Gorman submitted himself to the authority of the AG, by annually renewing his credentials, he also became bound to its disciplinary doctrine which authorized the publication of his wrong doings to the Universal Church of all Christians, whether or not those Christians believed in AG dogma. This prerequisite

was recognized by the Supreme Court in *Watson v. Jones,* 80 U.S. 679, 13 Wall. 679 (1872), where the Court stated:

> All who united themselves to such a body do so with an implied consent to this government, and are bound to submit to it. But it would be a vain consent and would lead to the total subversion of such religious bodies, if any one aggrieved by one of their decisions could appeal to the secular courts and have them reversed. It is of the essence of these religious unions, and of their right to establish tribunals for the decision of questions arising among themselves, that those decisions should be binding in all cases of ecclesiastical cognizance, subject only to such appeals as the organism itself provides for.

Id. at 80 U.S. 729, 13 Wall. 729. See also *Serbian Eastern Orthodox Diocese v. Milivojevich,* 426 U.S. 696, 711, 96 S.Ct. 2372, 2381, 49 L.Ed.2d 151 (1976); *Presbyterian Church v. Mary E.B. Hull Memorial Presbyterian Church,* 393 U.S. 440, 446, 89 S.Ct. 601, 604 (1969). Therefore, under *Watson,* Gorman cannot appeal to secular courts simply because he was aggrieved by the AG Councils, nor can he "forum shop" because of his dissatisfaction with his church's ruling.

By rejecting the concept of the Universal Church, the Fourth Circuit impermissably examined the religious doctrine of the AG and substituted its own doctrinal beliefs to define the AG constituency. Such an inquiry is clearly prohibited by a long line of Supreme Court cases interpreting the First Amendment. The hierarchical form of religious organization was considered by the *Watson* Court:

> [T]he rule of action which should govern the civil courts . . . is, that whenever, the questions of dis-

> cipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of these church judicatories to which the matter has been carried, the *legal tribunals must accept* such *decisions as final,* and as binding on them, in their application to the case before them.

80 U.S. 727, 13 Wall. 727 (emphasis added). The *Watson* holding was held to be the constitutional rule of law applicable to the states. *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in North America,* 344 U.S. 94, 116, 73 S.Ct. 143, 154 (1952). The AG is a hierarchical church and the Credentials Committee of the General Council of the AG, its highest authority, has the power to dismiss Gorman. Consequently, under the *Watson* rule, the Fourth Circuit must honor the AG's authority to make decisions and must accept its doctrinal beliefs in their entirety. *See Louisiana District Council of Assembly of God v. Victory Temple Assembly of God,* 427 So.2d 662 (5th Cir. 1983).

In *Serbian Eastern Orthodox Diocese v. Milivojevich,* 426 U.S. 696, 710, 96 S.Ct. 2372, 2381, 49 L.Ed. 151 (1976), the Supreme Court expanded *Watson,* holding further that a civil court has no jurisdiction to review a decision of a church tribunal, even if church decision-making proceedings are somewhat capricious. The Court stated that "a civil court must accept the ecclesiastical decisions of church tribunals as it finds them." *Id.* at 713, 96 S.Ct. at 2382.

The Supreme Court has permitted civil courts to interfere in church property disputes only where neutral principles of law can be applied. *Presbyterian Church v. Mary E.B. Hull Memorial Presbyterian Church,* 393 U.S.

440, 449, 89 S.Ct. 601, 606 (1969). However, the *Hull* Court did not extend this exception to allow civil courts to review controversies involving the interpretation of church doctrine. The Court stated:

> " . . . First Amendment values are plainly jeopardized when church property litigation is made to turn on the resolution by civil courts of controversies over *religious doctrine and practice.*"

393 U.S. at 449; 89 S.Ct. at 606 (emphasis added). The Appellate Court's rejection and re-defining of the AG doctrine, as discussed above, contravenes this holding and offends the First Amendment and violates the freedoms guaranteed therein.

C. Respondents' claim for defamation does not transform this ecclesiastical controversy into a judicial dispute to be brought within the jurisdiction of civil courts.

The fact that Gorman prays for damages for defamation rather than reinstatement in the AG does not provide a jurisdictional basis for Louisiana civil courts.

In *Hutchison v. Thomas,* 789 F.2d 392 (6th Cir. 1986), *cert. denied,* 479 U.S. 885, 107 S.Ct. 277, 93 L.Ed. 2d 253 (1986), an ordained Methodist minister challenged his enforced retirement under church disciplinary rules by suing the church hierarchy for defamation, intentional infliction of emotional distress and breach of contract. *Id.* at 392, 396. The minister also specifically pled fraud and collusion. *Id.* at 393. The Sixth Circuit Court of Appeal held that the district court did not have subject matter jurisdiction over a former minister's claim against his church in defamation. *Id.* at 395.

In reaching its decision, the *Hutchison* Court eliminated the exception espoused in *Gonzalez v. Roman Catholic Archbishop,* 280 U.S. 1, 50 S.Ct. 5, 74 L.Ed. 131 (1929) for "marginal civil court review" of religious cases involving "fraud, collusion or arbitrariness". The *Serbian* decision, forty-seven years later, called this *Gonzalez* language "dictum only" and excluded the exception of "arbitrariness". Consequently, the Court in *Hutchison* held that if "review is allowed for fraud or collusion, it is still only allowed for fraud and collusion of the most serious nature undermining the very authority of the decision-making body." 789 F.2d at 395.

In this case, Gorman has characterized the actions of the defendants as a conspiracy. Yet, he offers no facts to support this allegation. Mere conclusive, self-serving allegations are not sufficient. Moreover, he does not dispute the authority of the decision-making body. His conspiracy allegation cannot be considered of the "most serious nature" as required by *Hutchison.*

In *Joiner v. Weeks,* 383 So.2d 101 (La. App. 3d Cir. 1980), *writ denied,* 385 So.2d 257 (1980) a former pastor of the United Pentecostal Church filed a defamation suit against various members of the church for publicly disclosing the findings of a church tribunal. In deciding the merits of the defamation action, the Court held that the claim must be dismissed against all defendants based upon *Serbian*:

> Plaintiff's complaint against the defendant Board members is, in reality, an attempt by plaintiff to appeal the decision of the Board that he is spiritually unfit to continue as a minister in the United Pentecostal Church. The United States Supreme Court has declared it is impermissible, as a violation of the

> First Amendment of the United States Constitution for civil courts to investigate the propriety of ecclesiastical proceedings in disciplinary matters. *Serbian Eastern Orthodox Diocese for the United States of America and Canada, et al v. Milivojevich,* 427 U.S. 696, 96 S.Ct. 2372, 49 L.Ed.2d 151 (1976).

Id. at 106. Further, *Joiner* held:

> To allow defamation suits to be litigated in the fullest extent against members of a religious board who are merely discharging the duty which has been entrusted to them by their church could have a potentially chilling effect on the performance of those duties and could very well inhibit the free communication of important ideas and candid opinions. Our state Supreme Court recognized this danger to the free exercise of First Amendment rights in *Mashburn v. Collin,* 355 So.2d 879 (La. 1977).

Id. at 106. If respondents are permitted to litigate this defamation suit, they necessarily penalize and, in effect, silence the petitioners and others who were performing their duties as required by their church, thereby generating a chilling effect.

It is to be noted that the Appellate Court's holding that the district court has subject matter jurisdiction over this claim is in direct conflict with the opinion of a different panel of that Court set forth in the case of *McManus v. Taylor,* 521 So.2d 449 (La. App. 4th Cir. 1988). There, the Fourth Circuit held that the district court erred in overruling an exception of subject matter jurisdiction over a defamation suit very similar to Gorman's in this case. *McManus* involved a dispute between McManus, a local minister of the Church of God, and Taylor, an upper-level church supervisor. As a result of the dispute, McManus

was dismissed as a minister. He then sued Taylor and others for defamation and breach of quasi contract. The Fourth Circuit correctly dismissed the suit on the basis that the district court lacked subject matter jurisdiction. The panel recognized that "the Supreme Court in the *Serbian* case had declared it an impermissible violation of the First Amendment for civil courts to investigate the propriety of ecclesiastical proceedings in disciplinary matters. . ." *Id.* at 451 (emphasis added). The Fourth Circuit further declared that:

> Plaintiff would have our courts investigate the propriety of proceedings conducted by his church and the interpretation and application of church rules. He would subject his church authorities to a defamation case based upon the performance of their duties in the administration of the church. See also *La. District Council v. Victory Temple Assembly,* 444 So.2d 640 (La. 5th Cir. 1983) *writ denied,* 449 So.2d 1343; *United Pentecostal Church Intern v. Sanderson,* 391 So.2d 1293 (La. 2nd Cir. 1980) *writ denied,* 395 So.2d 682.

Id. at 106. There seems to be no conceptual difference between the dispute in *McManus* and the dispute in this case. The only factual difference is Gorman's notoriety as a minister and the extensive publicity resulting from such notoriety. Thus, in two opinions, written within 2½ months of each other, the Fourth Circuit rendered inconsistent decisions. Since the two decisions create a conflict within an important area of constitutional rights, i.e., religious freedom, petitioners submit that this Court should grant a Writ of Certiorari to resolve this conflict.

II.

A Corporation does not have a cause of action in defamation for allegedly defamatory statements directed personally at its officer and founder.

The Court of Appeals' holding that MGM stated a cause of action in defamation directly conflicts with established Louisiana law that an action for defamation is personal to the party defamed. *Pattison v. Gulf Bag Company*, 116 La. 963, 41 So. 224 (La. 1906).

The Appellate Court held that "it was possible for MGM to be defamed by statements about Gorman even if MGM was not mentioned by name in those statements." (32a-33a). This proposition is not supported by jurisprudence, statutory law or precedent. It does not seem to be justified even by the secondary authorities relied upon by the Fourth Circuit.

In *McBeth v. United Press International, Inc.*, 505 F.2d 959 (5th Cir. 1974), *cert. denied*, 421 U.S. 976, 95 S.Ct. 1976, 44 L.Ed.2d 467 (1975) the United States Fifth Circuit affirmed the *Pattison* rule and stated that "(t)he general rule precludes a person from recovering for a defamatory statement made about another, even if the statement inflicts some injury on the party seeking recovery." *Id.* at 960.

More recently, in *Coulon v. Gaylord Broadcasting*, 433 So.2d 429 (La. App. 4th Cir. 1983), *writ denied*, 439 So.2d 1073 (1983), the Fourth Circuit followed established precedent in holding that a family could not sue for the defamation of the son. The Court noted that an action for defamation "must be brought by the person against whom the defamatory charge has been made; a third person cannot sue either along or jointly with the interested

party." *Id.* at 431; (citing W. Prosser, *The Law of Torts,* Sec. 111 (4th ed. 1971)) "Defamatory words, in order to be actionable, must refer to some ascertained or ascertainable person and that person must be the plaintiff. . ." *Id.* at 431 (citing 53 C.J.S. Libel and Slander, Sec. 11 (1948)). These widely accepted rules of law establish unequivocably that MGM cannot be defamed by statements allegedly made about Gorman personally. None of the statements refer to any misconduct by the corporation itself. The fact that MGM lost money is an indirect consequence of Gorman's alleged defamation. Louisiana jurisprudence has held that defamation cannot be asserted by a third party who is only indirectly affected. *Coulon,* at 431.

Despite acknowledgement of *Coulon,* the Appellate Court attempted to distinguish this case by stating that "the reputation of Gorman's ministry was inextricably tied to his personal reputation." (33a). However, the opinion offers no citation of Louisiana law to support this distinction. Instead, the Appellate Court merely relied on Section 111 of W. Prosser's *Handbook of the Law of Torts* and Section 564(e) of the *Restatement of Torts 2d.* The Fourth Circuit's position is not supported by these secondary authorities.

Prosser introduces his discussion on "who may be defamed" in Section 111 of the *Handbook* by stating that "(t)he civil action is personal to the plaintiff and cannot be founded on the defamation of the other." Regarding a corporation's cause of action for defamation, it then states:

> "A corporation is regarded as having no reputation in any personal sense so that *it cannot be defamed by words,* such as those *imputing unchastity, which would*

> *affect the purely personal reputation of an individual. . . An organization is not defamed by words directed at its officers, stockholders, or employees,* nor are they defamed by words directed at it unless the words are such, in light of the connection between them, as to defame them both."

Id. at 715-46 (emphasis added). Clearly, under this authority, a corporation cannot assert a cause of action based on the alleged statements directed at one of its members.

The Court of Appeals' reliance on Section 564(e) of the *Restatement of Torts 2d* is also suspect. The *Restatement* illustrates how statements under certain circumstances can be defamatory to a third person. It provides two examples to illustrate the exception to the general rule that a third person cannot sue for the defamation of another. They are:

1. "A calls B a cuckold in the presence of C. A has defamed B's wife."
2. "A states to B that C is an illegitimate child. A has defamed C's mother."

Id. at 167. The relationships expressed above can be sharply contrasted to the relationship which exists between an officer of a corporation and the corporation. For example, a "cuckold" is "a man whose wife is unfaithful." *Webster's 9th New Collegiate Dictionary,* p. 313 (1984). Thus, it is impossible to call a man a cuckold without insinuating his wife's infidelity. The word illegitimate means "born of parents not married to each other." *Id.* at 599. Consequently, labeling a child illegitimate refutes his mother's morality.

Contrary to these examples, the word unchaste as used in connection with Gorman is not discriptive of a

corporation. When one of the corporate officers is alleged to be unethical, a corporation's reputation is not spontaneously impugned. The ethics of MGM were never challenged and were, thus, not affected.

The rejection of MGM's claim is also supported by other jurisdictions. In *Church of Scientology of California v. Flynn,* 578 F.Supp. 266 (D.C. Mass. 1984), the Church of Scientology sued an attorney who allegedly stated that "someone like a scientologist" had commited a theft. *Id.* at 267. He did not falsely charge the corporation itself with any kind of wrong doing. The United States District Court in Massachusetts cited the principles of libel law from several jurisdictions. The Court stated:

> "But a corporation, like a private individual, cannot prevail in a libel action unless the allegedly defamatory statement was published "of and concerning" the corporation. *Gilbert Shoe Co. v. Rumpf Publishing Co.,* 112 F.Supp. 228, 229 (D. Mass. 1953); *Restatement (Second) of Torts,* Section 561, 564 (1977). Whether a corporation's standing in the community was actually diminished is not relevant if the publication at issue did not falsely charge the corporation itself with some kind of impropriety: "One who is not himself libelled cannot recover even though he has been injured by the libel published concerning another." *Gilbert Shoe Co. v. Rumpf Publishing Co.,* 112 F.Supp. at 229 (office or stockholder of a corporation who is not personally libelled has no right to recover for a libel published of the corporation). Likewise, an allegation that a defendant made a statement, intending to reduce public respect for a person does not, in the absence of a libelous charge directed at that person, present a triable issue. *Corrigan v. Bobbs-Merril Co.,* 228 N.Y. 58, 126 N.E. 260, 262 (1920) ("The question is not so much who as aimed at as who was hit.").

Id. at 268.

Respondents allege that a certain passage from the September 2 statement defames MGM. That passage merely states that MGM is not recognized or endorsed by the Louisiana District Council and the General Council of the AG, and in fact never has been (54a). This statement is an assertion of a nonpartisan fact and is merely informative of which ministries the AG endorses. It neither refutes MGM's financial soundness nor casts aspersions on its business ethics. See *Golden Palace, Inc. v. National Broadcasting Co., Inc.*, 386 F.Supp. 107 (D.C.D.C. 1974) *aff'd*, 530 F.2d 1094 (D.C. Cir. 1976).

Additionally, respondents allege in paragraph 11, 20 and 27 of the First Supplemental and Amending Petition that statements were made which impugned the way MGM conducted its business and credit operations. (85a-88a). However, the actual statements were not identified. Petitioners contend that such nebulous and unsupported allegations should not be considered sufficient to state a claim for defamation by MGM. Because the holding that MGM can assert a cause of action in defamation is in direct conflict with Louisiana law and other jurisdictions, this Court should grant a Writ of Certiorari to review this decision.

———o———

CONCLUSION

In the April 22nd opinion, the Louisiana Fourth Circuit impermissibly inquired into the validity of church doctrine and substituted its own doctrinal beliefs for the AG's concept of the Universal Church. By so doing, the Fourth Circuit violated the very premise of the First Amendment which forbids judicial interference with ecclesiastical matters. Additionally, the Court ignored its own precedent in *McManus v. Taylor* ruling that this defamation claim can be adjudicated by Louisiana civil courts.

The Appellate Court also disregarded longstanding Louisiana jurisprudence by holding that MGM has a cause of action in defamation for statements allegedly directed against Gorman personally. Since these holdings violate the First Amendment of the United States Constitution, the Louisiana Constitution, Louisiana case law and jurisprudential expressions of the United States Supreme Court, this Court should grant petitioners a Writ of Certiorari to review this decision.

Respectfully submitted,

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December 20, 1988

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APPENDIX I

CIVIL DISTRICT COURT FOR
THE PARISH OF ORLEANS
STATE OF LOUISIANA

NO. 87-5289 DIVISION "K"

MARVIN GORMAN, ET AL
VERSUS
JIMMY SWAGGART, ET AL

JUDGMENT

This matter came for hearing on Exceptions filed by several defendants and a Motion for Protective Order filed herein on behalf of defendants, Jimmy Swaggart, Jimmy Swaggart Ministries, Inc. and William D. Treeby:

After considering the pleadings, the argument of Counsel and the law:

IT IS ORDERED, ADJUDGED AND DECREED that the Exceptions of No Right or Cause of Action filed herein on behalf of defendants, Michael Indest, Lakeview Christian Center, Jimmy Swaggart, Jimmy Swaggart Ministries, William D. Treeby, Don Brankel, Cecil Janway, Louisiana District Council of the Assemblies of God, Inc., The First Assembly of God Church, Inc., Waldo Risner, Allen McDonnell, Tom Miller, Canal Street Assembly of God, Inc. to the Petition filed here on behalf of Marvin Gorman Ministries, Inc. be, and the same are hereby maintained and therefore the Petition filed herein on behalf of Marvin Gorman Ministries, Inc. is hereby dismissed.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Exceptions of Lack of Subject Matter Jurisdiction filed herein on behalf of The General

Council of the Assemblies of God, Michael Indest and Lakeview Christian Center be, and the same are hereby maintained and therefore these proceedings are hereby dismissed as to those defendants.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all other Exceptions urged by defendants Jimmy Swaggart, Jimmy Swaggart Ministries, Inc., William D. Treeby, Don Brankel, Cecil Janway, Louisiana District Council of the Assemblies of God, Inc., The First Assembly of God Church, Inc., Waldo Risner, Allen McDonnell, Tom Miller, Canal Street Assembly of God, Inc. be, and the same are hereby overruled. Defendants herein have fifteen days within which to file responsive pleadings.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that a Protective Order Issue herein and therefore;

IT IS ORDERED that:

1. All discovery requests, including deposition notices of non-party witnesses, document requests, interrogatories, and other applications for discovery and/or responses thereto and contents thereof, shall not be filed in the record except as authorized herein and shall be furnished only to attorneys of record, parties and the persons to whom the respective discovery requests are directed unless further distribution is authorized by subsequent order of this Court. The Clerk of Court, upon presentation of a signed deposition notice not filed in the record, shall issue a deposition subpoena to the party requesting same; the party requesting issuance of the deposition subpoena is hereby authorized to and shall employ a private per-

son, not a party to these proceedings, to serve the deposition subpoena; and after service of the deposition subpoena is made, the party shall retain the return of service in its possession and shall not file the return of service into the record, except as authorized in this order;

2. Any documents produced in discovery in connection with this case shall be stamped "Confidential; Subject to Protective Order entered in Civil Action No. 87-5289, Civil District Court for the Parish of Orleans" and shall be numbered sequentially by the party producing same with a suitable prefix to denote its origin;

3. Depositions in this proceeding shall be closed with attendance limited to court reporters, parties, attorneys of record, witnesses and attorneys of the witnesses;

4. Subject to the provisions of paragraph 5, depositions and deposition exhibits shall be sealed and all copies retained by parties and their attorneys, or by witnesses and their attorneys, and shall be used solely in connection with this litigation and shall not be distributed or publicized except as authorized in this order;

5. In the event that any pleadings or documents utilizing or arising from pretrial discovery (including but not limited to depositions and deposition exhibits, exhibits and answers to interrogatories, and motions to compel discovery) (hereinafter collectively referred to as "Filed Materials") are to be filed in this proceedings by any party:

(a) Such Filed Materials will be distributed to and received by all counsel of record at least seven days prior to the date of filing, along with notification that the distributing party intends to file the Filed Materials on a specified date;

(b) Any party to the proceeding shall then be entitled to file a motion to seal the Filed Materials and/or to close any hearing that may be held on the Filed Materials. Pending the determination on the motion to seal and/or to close the hearing on the Filed Materials, the Filed Materials shall be filed under seal. The temporary filing of the Filed Materials under seal shall not alter the burden of justifying the sealing or closure as provided for by applicable law:

(c) In the event that any party filed a motion to seal Filed Materials or to close a hearing on Filed Materials or any other hearing, that party shall notice such motion for hearing and serve all counsel of record and the attorney for the intervenors, who will be provided with reasonable advance notice of the hearing and shall be afforded an opportunity to appear and oppose the motion to seal the Filed Materials and/or close the hearing on the Filed Materials or any other hearing.

(d) In the event that any party files a motion to seal Filed Materials or to close a hearing on Filed Materials or any other hearing, that party shall do so in accordance with the order of this Court dated May 15, 1987.

6. Each of the parties, their attorneys, agents and representatives, shall make no use of and shall not disseminate, distribute or publicize the documents or information described in paragraphs 1-5 that are gained through discovery, other than such use as is necessary in order for the discovering party to prepare and try the case, and other than such disclosure as may occur in the public record or in public proceedings in this matter in conformity with this order. Unless disclosed in the public record or

public proceedings in this matter in conformity with this order, information gained by a party through the discovery process may not be published by any of the parties or made available to any news media for publication or dissemination. This protective order has no application except to information gained by the parties through the use of the discovery process. The restrictions in this paragraph do not apply to Intervenors, their attorneys, agents and representatives.

JUDGMENT READ, RENDERED AND SIGNED this 8th day of June, 1987 at New Orleans, Louisiana.

/s/ Richard J. Ganucheau
JUDGE

APPENDIX II

CIVIL DISTRICT COURT FOR
THE PARISH OF ORLEANS
STATE OF LOUISIANA

NO. 87-5289 DIVISION "K" DOCKET NO.

MARVIN GORMAN and MARVIN GORMAN MINISTRIES, INC.

VERSUS

JIMMY SWAGGART, JIMMY SWAGGART MINISTRIES, INC., WILLIAM D. TREEBY, THE FIRST ASSEMBLY OF GOD CHURCH OF NEW ORLEANS, LOUISIANA, INC., LOUISIANA DISTRICT COUNCIL OF THE ASSEMBLIES OF GOD, INC., THE GENERAL COUNCIL OF THE ASSEMBLIES OF GOD, LAKEVIEW CHRISTIAN CENTER, CANAL ST. ASSEMBLY OF GOD, INC., MICHAEL INDEST, TOM MILLER, CECIL JANWAY, G. RAYMOND CARLSON, WALDO RISNER, ALLAN McDONNEL and DON BRANKEL

FILED: _____ _____
DEPUTY CLERK

EXCEPTIONS OF NO RIGHT OR CAUSE OF ACTION AND LACK OF SUBJECT MATTER JURISDICTION

Defendants, Jimmy Swaggart, Jimmy Swaggart Ministries, Inc. ("JSM"), William D. Treeby and Don Brankel (hereinafter collectively referred to as ("movants") urge Exceptions of No Right or Cause of Action on behalf of Marvin Gorman Ministries, Inc. ("MGM") to maintain this claim based upon the allegations made in the First Supplemental and Amending Petition filed herein, and Lack of Subject Matter Jurisdiction over the claims raised

in the Original Petition and First Supplemental and Amending Petition for the reasons stated below and in the Memorandum of Law filed herewith:

1.

The original Petition and the Amended Petition should be dismissed for lack of subject matter jurisdiction over the claims made in this lawsuit. All of the alleged statements made and actions taken by the defendants arose out of the exercise of rights and responsibilities to their church pursuant to their religious beliefs and the disciplinary processes required by their church, to which Marvin Gorman submitted himself. Both the Louisiana and United States Constitutions guarantee the defendants the right to practice their religious beliefs without interference by the judicial branch. Specifically, all of the statements allegedly made by the defendants relate to the ecclesiastical inquiry into the fitness of Marvin Gorman to continue as an ordained minister of the Assemblies of God. Louisiana courts have refused to decide issues which have any bearing on a church's ecclesiastical decision to remove a minister, preacher, or priest. Therefore, this lawsuit should be dismissed as to the moving parties for lack of subject matter jurisdiction.

2.

In accordance with the Judgment entered in this matter on June 8, 1987, Marvin Gorman Ministries, Inc. ("MGM") has no right or cause of action to assert the claims made in the original Petition because no defamatory statements were made against MGM and because a corporation cannot assert a cause of action for invasion

of privacy or intentional infliction of emotional distress. Accordingly, MGM was dismissed from these proceedings. On May 22, 1987, plaintiffs filed their First Supplemental and Amending Petition (hereinafter "Amended Petition"). Because the Amended Petition does not cure the defects in the original Petition, the Amended Petition also does not state a claim on behalf of MGM. Accordingly, MGM should be dismissed from these proceedings with regard to the allegations of the Amended Petition as well.

WHEREFORE, defendants, Jimmy Swaggart, Jimmy Swaggart Ministries, Inc., William D. Treeby and Don Brankel pray that these exceptions be maintained and that the original Petition and First Supplemental and Amending Petition filed herein be dismissed for the reasons stated above and in the attached Memorandum of Law.

Respectfully submitted,

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Counsel for Jimmy Swaggart,
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William D. Treeby and
Don Brankel

CERTIFICATE

I hereby certify that a copy of the foregoing Exceptions of No Cause and No Right of Action has been served upon all counsel of record, via the United States mail, postage prepaid, this 10th day of June, 1987.

/s/ Denise M. Pilie'

CIVIL DISTRICT COURT FOR THE
PARISH OF ORLEANS

NO. 87-5289 DIVISION "K" DOCKET NO.

MARVIN GORMAN and MARVIN GORMAN
MINISTRIES, INC.

VERSUS

JIMMY SWAGGART, JIMMY SWAGGART MINISTRIES, INC., WILLIAM D. TREEBY, THE FIRST ASSEMBLY OF GOD CHURCH OF NEW ORLEANS, LOUISIANA, INC., LOUISIANA DISTRICT COUNCIL OF THE ASSEMBLIES OF GOD, INC., THE GENERAL COUNCIL OF THE ASSEMBLIES OF GOD, LAKEVIEW CHRISTIAN CENTER, CANAL ST. ASSEMBLY OF GOD, INC., MICHAEL INDEST, TOM MILLER, CECIL JANWAY, G. RAYMOND CARLSON, WALDO RISNER, ALLAN MCDONNEL and DON BRANKEL

FILED: .....

.....
DEPUTY CLERK

MEMORANDUM IN SUPPORT OF EXCEPTIONS OF NO RIGHT OR CAUSE OF ACTION AND LACK OF SUBJECT MATTER JURISDICTION

Defendants, Jimmy Swaggart, Jimmy Swaggart Ministries, Inc. ("JSM"), William D. Treeby and Don Brankel, through undersigned counsel, submit this Memorandum in Support of the Exceptions of No Right or Cause of Action and Lack of Subject Matter Jurisdiction which are filed herewith in the above-referenced proceedings.

PROCEDURAL HISTORY AND FACTS

On May 15, 1987, this Court heard Exceptions of No Right of Action, No Cause of Action, Lack of Subject Matter Jurisdiction, and others which were brought by the defendants in this matter. The exceptions were taken under submission and a judgment was rendered on June 8, 1987. In that judgment, this Court maintained the exceptions of lack of subject matter jurisdiction filed on behalf of the General Council of the Assemblies of God, Michael Indest and Lakeview Christian Center and dismissed the proceedings as to those defendants. This Court also maintained the exceptions of no right or cause of action filed on behalf of movants herein and others and dismissed the Petition filed on behalf of Marvin Gorman Ministries, Inc., ("MGM"). All other exceptions urged by the defendants were overruled.

After the exceptions were taken under submission, but prior to the entry of judgment, the plaintiffs filed a First Supplemental and Amending Petition ("Amended Peti-

tion''). The Amended Petition does not cure the jurisdictional, procedural and substantive deficiencies of the Original Petition. The Original and Amended Petitions should be dismissed.

Because this Court lacks subject matter jurisdiction as to all defendants in this litigation, and not only over those parties who initially raised the exception in writing, this proceeding should be dismissed as to all defendants. Therefore, movants specifically urge the lack of subject matter jurisdiction as to themselves, and pray that the Petition and First Supplemental and Amending Petition be dismissed.

In the event that the proceedings are not dismissed as to the movants herein, movants reurge the No Right or Cause of Action exception on behalf of MGM with regard to the allegations of the Amended Petition. The Amended Petition attempts to overcome the exception of no right or cause of action filed against MGM by alleging that certain defendants impugned the manner in which MGM conducts its business. The Amended Petition does not cure the pleading deficiencies inherent in the original petition, and the exception of no right or cause of action directed to MGM should be maintained as to the Amended Petition as well.

ARGUMENT

I. This Court Lacks Subject Matter Jurisdiction Over The Claims Made In The Original Petition And First Supplemental And Amending Petition Filed In This Matter.

In the judgment filed by this Court on June 8, 1987, the exception of lack of subject matter jurisdiction filed

on behalf of the General Council of the Assemblies of God, Michael Indest and Lakeview Christian Center were maintained, and these proceeding were dismissed as to those defendants. Movants hereby urge that exception as to the allegations made in the original Petition and in the First Supplemental and Amending Petition, and adopt the Memoranda in Support of those exceptions filed on behalf of the General Council of the Assemblies of God, Michael Indest and Lakeview Christian Center.

The allegations against Jimmy Swaggart, JSM, William D. Treeby and Don Brankel are inextricably intertwined with those against Pastor Michael Indest, Lakeview Christian Center and the General Council. Each of those defendants, just as the movants herein, purportedly made or condoned statements made to various members and affiliates of the Assemblies of God Church which directly involved the dismissal of Marvin Gorman from the ministry. In essence, the actions of both the movants and the dismissed defendants were sanctioned by the Constitution and Bylaws of the Assemblies of God. Because Marvin Gorman agreed to be bound by this Constitution and By Laws, and because these rules govern the administrative activities of the Church, this court lacks subject matter jurisdiction over this claim.

As stated in the Supplemental Memorandum in Support of the Exceptions filed on behalf of Michael Indest and Lakeview Christian Center, this Court lacks subject matter jurisdiction over this claim because this suit is a dispute between and among church members regarding the disciplining of a church minister. Marvin Gorman was an ordained, minister, credentialed by the Louisiana District

Council of the Assemblies of God and the General Council of the Assemblies of God. He was the pastor of a local Assemblies of God church, First Assembly of God Church of New Orleans, Inc. which was affiliated with the Louisiana District Council of the Assemblies of God. Further, he was a member of the Executive Presbytery, a thirteen-member board which governs the General Council of the Assemblies of God.

Jimmy Swaggart, who seeks dismissal here, is an ordained minister, credentialed by the Louisiana District Council of the Assemblies of God and the General Council of the Assemblies of God. Further, Jimmy Swaggart is the president of Jimmy Swaggart Ministries, a church affiliated with the General Council of the Assemblies of God. He is also the pastor of Jimmy Swaggart Ministries' local church in Baton Rouge, the Family Worship Center, which is affiliated with the Louisiana District Council of the Assemblies of God. Finally, all of the activities alleged against Jimmy Swaggart Ministries in this suit came as a result of the fact that he was an ordained minister of the Assemblies of God and a witness to the disciplinary allegations made against Marvin Gorman.

Don Brankel is an ordained minister of the Assemblies of God, credentialed by the Arkansas District of the Assemblies of God and the General Council of the Assemblies of God. Don Brankel is an associate minister of Jimmy Swaggart Ministries which is a church affiliated with the General Council of the Assemblies of God.

William D. Treeby is a member of Lakeview Christian Center, a local Assemblies of God church which is affiliated with the Louisiana District Council of the As-

semblies of God. He is also a member of the board of directors of Lakeview Christian Center as well as its Secretary. As an officer and director of Lakeview Christian Center, which was dismissed for lack of subject matter jurisdiction, he should be in no different position than Lakeview Christian Center. Additionally, William Treeby is a member of the board of directors of Jimmy Swaggart Ministries, which is, as has been stated above, affiliated with the General Council of the Assemblies of God. Additionally, he has acted as legal counsel to Jimmy Swaggart Ministries and the Louisiana District Council of the Assemblies of God.

Each of these defendants, Jimmy Swaggart, Jimmy Swaggart Ministries, Don Brankel and William D. Treeby had a responsibility to their church and the right to disclose to the church hierarchy information of which they were aware regarding the fitness of Marvin Gorman to continue to be an Assemblies of God minister, credentialed by both the Louisiana District Council and the General Council of the Assemblies of God.

An examination of the Original and Amended Petitions demonstrates that the actions supposedly taken and statements purportedly made by each of the movants herein were in strict accordance with the governing and administrative procedures outlined by the Assemblies of God, both at a state and a national level. Because the allegations regarding the movants are no different from those made regarding the defendants who have been dismissed, the same result should obtain as to the movants herein.

Specifically, Paragraph 6 of the Petition complains that Swaggart and Treeby, movants herein, along with

Michael Indest, a dismissed defendant, confronted Marvin Gorman regarding the allegations they had heard which could be cause for Gorman's dismissal from the Assemblies of God Ministries. In Paragraphs 9, 13, 14, 15 and 21 the plaintiffs complain of various statements purportedly made or endorsed by Swaggart, Treeby, Indest and others, in which certain facts regarding the termination of Marvin Gorman were disclosed to the church congregation and others. The allegations made against Swaggart and Treeby in these Paragraphs are substantially the same as those made against Indest. For the same reasons as those set forth by Indest, this court has no subject matter jurisdiction over any of the claims made in these paragraphs.[1]

In Paragraph 11 of the Petition as amended, the plaintiffs complain that the August 20 letter written by Jimmy Swaggart to Cecil Janway caused them damage. Examination of the letter itself reveals, however, that Swaggart urges only that "Brother Gorman's case must be handled

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[1] In Paragraph 15, the plaintiffs also allege that Don Brankel, who is an ordained Minister with the Assemblies of God, conspired with the other defendants to spread false rumors regarding Gorman's involvement with a female evangelist. No facts are given as to when or where this statement purportedly was made and no allegation is made that any particular damage resulted therefrom. This is the only allegation made in either the original or the Amended Petition against Don Brankel; based on this allegation alone, the plaintiffs claim that Don Brankel owes them $90 million dollars in damages. Because there is simply no factual support for this allegation, it is insufficient to support a claim against Don Brankel. Moreover, because Brankel's statements purportedly were made in the same conspiracy which allegedly surrounded Gorman's termination, this court has no jurisdiction over this claim.

in exactly the same as any other Minister of the Gospel in our District—no more, no less." This request is directed to Cecil Janway, the Louisiana District Superintendent, whose responsibility is to enforce the disciplinary procedures outlined in the Constitution and By-laws. Gorman agreed annually to be governed by these rules. This Court should not interfere with the actions taken by the Church in accordance therewith, nor should it interfere with any of the processes undertaken by members of the church, ministry or lay, who fulfilled their responsibility to the church.

Finally, in Paragraph 16 of the Petition the plaintiffs claim that Swaggart is not "an official with the First Assembly of God Church in New Orleans, or with district, state or national organization." That bald allegation is not sufficient in light of page 2 of the church directory contained in the Louisiana District Council, Assemblies of God, 1986-87 Yearbook. That document is in evidence as Defendant's Exhibit B, and it discloses Jimmy Swaggart as a pastor of Family Worship Center in Baton Rouge, Louisiana. Further, that bald allegation cannot stand in light of the evidence, p. 12 of the Ministerial Directory contained in the same Exhibit which identifies Jimmy Swaggart as an ordained minister of the Assemblies of God. Swaggart, with his credentials and affiliations with the Assemblies of God Church and is bound by its internal laws. As an Assemblies of God minister for more than twenty-five years, he is governed by the same internal church rules as was Marvin Gorman. Swaggart had a right and obligation to request that the rules of his church be upheld, and to participate in their enforcement. Like Michael Indest, who is an Assemblies of God minister,

Swaggart's actions taken in accordance with these administrative rules, are not subject to review by this court.

No independent allegations are made against JSM in either petition. Jimmy Swaggart, Bill Treeby and Don Brankel are the only employees or officers of JSM who are named in these proceedings. Therefore, if these defendants are dismissed JSM should be dismissed as well.

II. The Exception Of No Right Or Cause Of Action On Behalf Of Marvin Gorman Ministries, Inc. Should Be Maintained As To The First Supplemental And Amending Petition.

On June 8, 1987, this Court maintained the exception of no right or cause of action urged against MGM regarding the allegations made in the original Petition. As stated in the original Memorandum in Support of the Exception of No Right or Cause of Action filed on behalf of the movants, the original Petition was deficient because no purportedly defamatory statements were alleged against MGM and because a corporation cannot sustain a cause of action for invasion of privacy or intentional infliction of emotional distress. In the event that the Exception of Lack of Subject Matter Jurisdiction is not sustained and this proceeding is not dismissed, movants hereby reurge this Exception as to the allegations of the Amended Petition, and adopt the Memoranda filed by the movants herein and the other defendants in Support of this Exception.

In the Amended Petition, the plaintiffs attempt to address the pleading deficiencies in the original Petition by alleging that certain defamatory statements were made against MGM, in addition to Marvin Gorman personally. Plaintiffs amend two paragraphs of the Original Petition

to include purportedly defamatory statements allegedly made against MGM; other paragraphs of the Petition are amended to allege a conspiracy among all defendants. Only one of these purportedly defamatory statements against MGM is attributed to the movants herein.

In Paragraph 1 of the Amended Petition, the plaintiff amends Paragraph 11 of the original Petition to include an allegation that Jimmy Swaggart caused MGM to go bankrupt by drafting his letter of August 20, 1986 to Cecil Janway. (*See* Petition Exhibit 2). The amended Petition states that "said August 20 letter also contained an enclosure wherein Jimmy Swaggart impuned [sic] the manner in which Marvin Gorman and Marvin Gorman Ministries, Inc. conducted its business." An examination of the August 20 letter written by Jimmy Swaggart demonstrates that the plaintiffs' statement is simply insupportable. Marvin Gorman Ministries, Inc. is not mentioned anywhere in the letter and no such enclosure is attached to the original or Amended Petitions. There is no reference in the body of the letter to an enclosure and no notation regarding an enclosure is listed beneath the signature line of the letter where the persons to whom the letter was copied are listed. Moreover, no allegation whatsoever regarding the business dealings of MGM is made in the letter. This unsupported allegation that a previously undisclosed enclosure maligned the good name of MGM is an insufficient basis on which to maintain an action against MGM.

The second purportedly defamatory statement made against MGM is alleged in Paragraph 6 of the Amended Petition which amends Paragraph 20 of the original Peti-

tion. In that Paragraph, the plaintiffs allege that Allen McDonnel made certain statements which "impl[ied] dishonesty as to Marvin Gorman Ministries's [sic] method of doing business". Again, no facts support the allegation that this statement was made, that it was defamatory or that Jimmy Swaggart, JSM, Bill Treeby or Don Brankel knew of or condoned the alleged statement. Moreover, the bare allegation that this purportedly defamatory statement was made does not support the allegation that MGM was damaged as a result.

After the Exceptions of No Right or Cause of Action was filed against MGM, the plaintiffs attempted to amend their Petition to support their claim that MGM was defamed. Without any factual underpinnings provided as basis for these new allegations, the action on behalf of MGM cannot be maintained. This Court should maintain movants exception of no cause or right of action on behalf of Marvin Gorman Ministries, Inc. as to the First Supplemental and Amending Petition, as it did on the original Petition filed in this matter.

CONCLUSION

The exception of lack of subject matter jurisdiction should be sustained as to Jimmy Swaggart, Jimmy Swaggart Ministries, Inc., William D. Treeby and Don Brankel because this Court lacks jurisdiction to look into the ecclesiastical functions of a church in the discipline and/or dismissal of its own minister. Moreover, the amended complaint does not rectify the deficiencies of the original complaint and does not state a cause of action on behalf of Marvin Gorman Ministries. Accordingly, the original

complaint and the First Supplemental and Amending Complaint should be dismissed as to the movants herein.

Respectfully submitted,

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/s/ H. Martin Hunley, Jr. /by/DMP
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Counsel for Jimmy Swaggart, Jimmy Swaggart Ministries, Inc., William D. Treeby and Don Brankel

CERTIFICATE

I hereby certify that a copy of the foregoing Memorandum in Support of Exceptions No Right of Action and Lack of Subject Matter Jurisdiction has been served upon all counsel of record, via the United States mail, postage prepaid, this 10th day of June, 1987.

/s/ Denise M. Pilie'

APPENDIX III

CIVIL DISTRICT COURT FOR
THE PARISH OF ORLEANS
STATE OF LOUISIANA

NO. 87-5289 DIVISION "K"

MARVIN GORMAN, ET AL

VERSUS

JIMMY SWAGGART, ET AL

JUDGMENT

This matter came for hearing on Exceptions filed herein on behalf of several defendants:

After considering the pleadings, the argument of Counsel, and the law: IT IS ORDERED, ADJUDGED AND DECREED that the Exceptions of Lack of Subject Matter Jurisdiction filed herein on behalf of Jimmy Swaggart, Jimmy Swaggart Ministries, Inc., William D. Treeby, Don Brankel, Cecil Janway, Louisiana District Council of the Assemblies of God, Inc., The First Assembly of God Church, Inc., Waldo Risner, Allen McDonnell, Tom Miller, Canal Street Assembly of God, Inc. be, and the same are hereby maintained and therefore these proceedings are hereby dismissed as to those defendants.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all other Exceptions filed herein on behalf of Jimmy Swaggart, Jimmy Swaggart Ministries, Inc., William D. Treeby, Don Brankel, Cecil Janway, Louisiana District Council of the Assemblies of God, Inc., The First Assembly of God Church, Inc., Waldo Risner, Allen

McDonnell, Tom Miller, Canal Street Assembly of God, Inc. be, and the same are hereby dismissed as moot.

JUDGMENT READ, RENDERED AND SIGNED this 31st day of August, 1987 at New Orleans, Louisiana.

/s/ Richard J. Ganucheau
JUDGE

APPENDIX IV

MARVIN GORMAN AND MARVIN GORMAN MINISTRIES, INC.	NO. CA-8757
	COURT OF APPEAL
VERSUS	
	FOURTH CIRCUIT
JIMMY SWAGGART, JIMMY SWAGGART MINISTRIES, INC., WILLIAM D. TREEBY, THE FIRST ASSEMBLY OF GOD CHURCH OF NEW ORLEANS, LOUISIANA, INC., LOUISIANA DISTRICT COUNCIL OF THE ASSEMBLES OF GOD, INC., THE GENERAL COUNSEL OF THE ASSEMBLIES OF GOD, LAKEVIEW CHRISTIAN CENTER, CANAL ST. ASSEMBLY OF GOD, INC., MICHAEL INDEST, TOM MILLER, CECIL JANWAY, WALDO RISNER, ALLAN McDONNEL AND DON BRANKEL	STATE OF LOUISIANA

APPEAL FROM CIVIL DISTRICT COURT,
PARISH OF ORLEANS

NO. 87-5289, DIVISION "K",
HONORABLE RICHARD J. GANUCHEAU, JUDGE

* * * * *

WILLIAM H. BYRNES, III
JUDGE

* * * * *

(Court composed of Judges William H. Byrnes, III, Philip C. Ciaccio, and Steven R. Plotkin)

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APR 22 1988

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REVERSED AND REMANDED

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APPENDIX V

This is an appeal from district court judgments maintaining declinatory exceptions of lack of subject matter jurisdiction and peremptory exceptions of no cause and no right of action in a suit brought by Marvin Gorman and Marvin Gorman Ministries, Inc. to recover damages for defamation, libel, invasion of privacy and intentional infliction of emotional distress from Jimmy Swaggart and thirteen other defendants. We reverse.

The suit arose out of the actions and events leading up to and following the dismissal and/or resignation of Marvin Gorman from his position as a minister of the Assemblies of God, a fundamentalist Christian religious body. Gorman was paster of the First Assembly of God Church in New Orleans and a member of this hierarchical denomination's national governing body. He was also the president and founder of Marvin Gorman Ministries, Inc., (MGM), a non-profit religious corporation which made extensive use of television as a means of raising money and carrying its message to the public.

The petition alleges that Gorman's separation from the Assemblies of God came about as the result of a July 15, 1986 confrontation between Gorman and defendant Jimmy Swaggart, another Assemblies of God minister. Other defendants present at this meeting were Michael Indest, pastor of Lakeview Christian Center, a New Orleans area Assemblies of God church, and a member of his congregation, William Treeby, an attorney who was a member of the board of directors of Jimmy Swaggart Ministries, Inc., and had represented Swaggart in the past. During the course of the July 15 meeting, Swaggart al-

legedly accused Gorman of committing immoral acts with several women over a period of years. Gorman admitted one instance of immoral conduct which had occurred several years earlier, but denied the remainder of Swaggart's accusations and refused to comply with Swaggart's demand that he make a full confession and seek rehabilitation within the Assemblies of God.

The next day, July 16, 1986, Gorman decided to resign both as a minister and as a member of the Assemblies of God. His resignation was apparently accepted by the board of directors of his church and his decision was announced to his congregation that same evening. However, Swaggart and several of the other defendants did not consider Gorman's resignation valid under the constitution and by-laws of the Assemblies of God and prepared a statement outlining in full their accusations against Gorman. They caused this statement to be read to Gorman's congregation on July 20, 1986, four days after his purported resignation.

In the meantime, the Louisiana District Council of the Assemblies of God instituted disciplinary action against Gorman, notwithstanding his resignation from their church. Gorman did not participate in this proceeding which culminated in an August 4, 1986 decision to recommend his dismissal as an Assemblies of God minister. The District Council's recommendation was accepted by the General Council on August 14, 1986, and Gorman was formally dismissed.

Apparently Gorman's resignation and the decision of the General Council to dismiss him did not close the matter as far as Swaggart and his group were concerned. On

August 20, 1986, Swaggart wrote to Cecil Janway, Superintendent for the Louisiana District Council of the Assemblies of God stating that he (Swaggart) had heard rumors that Janway believed (or was considering believing) Gorman's denial of Swaggart's accusations. Swaggart's letter went on to state that Gorman's version of his conduct was not true and that Swaggart wanted Gorman's case handled in the same way as any other minister's. Swaggart also said that he would take whatever steps were necessary to prevent a "cover-up". Since the Louisiana District Council had already reviewed the case, recommended dismissal, and had its recommendation accepted by the General Council, the purpose behind this letter is not clear. Discipline had already been pronounced and enforced on Gorman when Swaggart wrote the letter. Gorman had voluntarily left both the Assemblies of God church and its ministry more than a month earlier. Moreover, Swaggart's accusations had already been made known to both the Louisiana District Council and General Council when those bodies were considering whether to dismiss Gorman. Be that as it may, on September 2, 1986, Janway read yet another statement to the congregation of Gorman's former church which claimed among other things that:

> Established evidence and fact prove that Marvin E. Gorman engaged in multiple immoral incidents over a period of years which included adultery, illicit affairs and unscriptural lascivious conduct with women who came to him for counseling. This occurred for many years, extending up to and including this year. I have a statement from a woman telling of his conduct with her this year which was unbecoming to a minister.

The statement also criticized Gorman for presuming to tell his version of the incidents and asserted that:

> The manner in which members and supporters of First Assembly have been contacted directly and indirectly by Marvin E. Gorman demonstrates a blatant disregard for ministerial ethics. Such conflict and the misleading message being given shows an absence of christian love. There has been a disregard for unity and harmony in the body of Christ and the local Assembly. The responsibility for confusion, discord, and strife coming from some media messages and the personal contacts lies at the feet of Marvin E. Gorman and individuals coming to his defense, presumably out of ignorance of the true facts. We find this tragically unscriptural, misleading and detrimental to the spiritual well being of all believers.

Finally the September 2, 1986 letter stated that:

> A local television broadcast, last week, by Marvin E. Gorman, gave some the impression that myself and other district officials, as well as some national officials, of the Assemblies of God, had somehow endorsed or approved of his continued ministry. Any such implication is erroneous, unfounded, and without permission. There are national ministries recognized and endorsed by the Louisiana District Council and the General Council of the Assemblies of God. Marvin Gorman Ministries is not one of them now, and in fact has never been one of them.

The petition alleges that this letter was written by Swaggart, Treeby and others, and that its circulation and content were approved by the Louisiana District Council and General Council of the Assemblies of God. More importantly, it is alleged that distribution of this statement was not confined to members of the Assemblies of God

churches, but included pastors of churches of other denominations, the general public (both in Louisiana and throughout the United States), and foreign missionaries. The petition goes on to allege other acts and statements, which Gorman and MGM claim were made maliciously and with knowledge of their falsity, by various defendants to members of the media and private citizens. Gorman and MGM further claim that Swaggart and others caused MGM to lose television time by casting doubt on the financial, professional, and moral character of Gorman and his ministry. It is also alleged that the false stories concerning Gorman's conduct were embroidered and repeated to individuals and financial institutions, causing them to withdraw from commitments to finance various aspects of MGM's operations. Finally, it is alleged that Swaggart and others repeated the statements outlined above, as well as others accusing Gorman of embezzelling church funds and being connected with the Mafia, to representatives of the news media in order to further publicize their content and to damage both Gorman and MGM.

The petition was met with a number of exceptions including no cause of action, no right of action, and lack of subject-matter jurisdiction. As to Gorman individually, the exceptions of no cause and no right of action were either denied or dismissed as moot. These judgments were not appealed and need not concern us at this time. The exception of lack of subject-matter jurisdiction was maintained. This judgment forms the basis of Gorman's appeal.

As to MGM, the exceptions of no cause and no right of action were maintained and MGM's claims against all

defendants dismissed. The exceptions were based in part on the argument that a corporation cannot be defamed, libeled or caused emotional distress and that, to the extent the petition sought such damages, it failed to state a cause or right of action.

We begin by observing that this argument is not appropriately raised by the exception of no right of action. This exception is intended to question the plaintiff's right to bring the suit by challenging his legal interest in its subject matter. It raises the question of whether a remedy afforded by law can be invoked by a particular plaintiff. *Henry v. State through Department of Health & Human Resources,* 435 So.2d 565 (La. App. 3d Cir. 1983), *writ denied* 441 So.2d750 (La. 1983). It does not raise the issue of whether the remedy exists, only who may assert it. A challenge to the existence of a particular remedy is more properly raised by the exception of no cause of action. That exception questions whether the law grants a remedy to anyone for the particular harm alleged in the petition, just as the exception of no right of action questions whether a particular plaintiff is a member of the class to whom the remedy is extended. *Mercier v. Flugence,* 408 So.2d 52 (La. App. 3d Cir. 1981); *Gustin v. Shows,* 377 So.2d 1325 (La. App. 1st Cir. 1979).

In the present case, there is no doubt that if anyone had the right to bring an action for the damages MGM claimed in the petition, it was the corporation itself. It was therefore error to maintain the exceptions of no right of action as to MGM, and the judgments which have done so are reversed.

The real issue as it relates to MGM is whether the law provides a remedy under the facts alleged in the petition—in other words, does Louisiana law provide corporations with a *cause* of action for defamation, libel, etc. and if so, does the petition of this corporation allege sufficient facts to state such a cause? In our opinion, it does.

There were two main arguments presented in support of the exception of no cause of action. First, it was claimed that a corporation has no reputation in the personal sense and so cannot be defamed by non-business related statements. Second, it was argued that MGM could not bring suit based on allegedly defamatory statements made about Gorman but not about MGM. In our opinion, these arguments misconstrue the law and ignore the reality of this particular situation.

This case is not like that of a business corporation seeking damages for statements made about the personal morality of one of its officers or a member of its board of directors in matters unrelated to business. Gorman's personal reputation was one of MGM's primary assets. By questioning *his* moral integrity, the integrity of the corporation itself was called into question. In many ways, defamation of Gorman was defamation of his ministry. He was its principal spokesman. It was with him that the public identified. His reputation for spiritual and moral integrity was the cornerstone on which the ministry was built. Attacks on Gorman ,which included allegations that he embezzled MGM funds, could (and allegedly did) decrease contributions to MGM and lessen the confidence of lenders in the stability and integrity of the ministry. Under these circumstances, we believe it was possible for

MGM to be defamed by statements about Gorman even if MGM was not mentioned by name in those statements. For a discussion of this type of defamation see generally, W. Prosser, *Handbook of the Law of Torts,* Sec. 111, p. 745 (4th ed. 1971) and *Restatement of Torts 2d,* Sec. 564, comment (e).

In our opinion, the reputation of Gorman's ministry was inextricably tied to his personal reputation. The unusual nature of this relationship distinguishes this case from *Coulon v. Gaylord Broadcasting,* 433 So.2d 429 (La. App. 4th Cir. 1983), in which this court reaffirmed the *general* rule that an action for defamation is personal to the one defamed and cannot be asserted by one only indirectly affected. We therefore reject the argument that MGM cannot bring suit based on the defamatory statements purportedly made about Gorman.

We likewise reject the argument that a non-profit corporation like MGM cannot bring an action for defamation. In Sec. 561(b) of the *Restatement of Torts 2d,* the American Law Institute endorses the position that a non-profit corporation which depends on the public for financial support can bring such an action if there is publication of defamatory matters which interfere with the corporation's activities or tend to prejudice it in the public's eye. The comments to this section expressly address the applicability of this rule to religious and charitable organizations. We have found no Louisiana case directly on point. However, a number of cases have held without discussion that corporations which operate for profit have a cause of action for defamation. See *Economy Carpets Manufacturers & Distributors, Inc. v. Better Business Bureau of*

Baton Rouge, 361 So.2d 234 (La. App. 1st Cir. 1978); *WHC, Inc. v. Tri-State Road Boring, Inc.,* 468 So.2d 764 (La. App. 1st Cir. 1985). We see no reason to treat non-profit corporations differently. The position adopted by the Restatement is both reasonable and fair and we therefore adopt it as our own. See also *Prosser,* supra at 745.

However, as to MGM's claim for intentional infliction of emotional distress and invasion of privacy, another rule controls. MGM has conceded that it cannot recover damages for intentional infliction of emotional distress, so we need not address this issue. As to the invasion of privacy question, the defendants successfully argued in the district court that MGM could not assert this cause of action because a corporation has no right of privacy except as to misappropriation of trade names and other matters not connected with the facts of this case. We agree.

The tort of invasion of privacy appears to be directed at redressing the damage which an individual suffers when legally recognized elements of his right of privacy have been violated. The basis for recovery is the *emotional* injury which such violations cause. See generally *Prosser,* supra, Sec. 117, *Restatement of Torts 2d,* Sec. (1977). Being a fictional person, a corporation has no emotions to injure, and for this reason has traditionally been precluded from recovering damages based on invasion of privacy. We have been cited to no case allowing a corporation to recover on this basis and have found none in the course of our research. Moreover, MGM presents no serious or compelling argument in favor of changing this long standing rule, but directs its efforts primarily at the defama-

tion claim. Were this the only basis on which Gorman and MGM sought to recover, we would affirm the granting of the exception of no cause of action, finding as a matter of law that a corporation may not recover damages for such injury. However, that was not the case. Recovery was sought on a number of grounds, including defamation. It is therefore necessary for us to consider the petition as a whole to determine if it was sufficient to withstand an exception of no cause of action.

We begin by noting that for the purpose of deciding an exception of no cause of action the factual allegations of the petition are accepted as true. Moreover, any doubt as to the sufficiency of those allegations must be resolved in favor of the plaintiff. The exception can be maintained only when the facts alleged in the petition disclose no cause of action on *any* ground raised in the petition. *Faciane v. Southern Shipbuilding Corp.*, 446 So.2d 770 (La. App. 4th Cir. 1984). The reason for this rule is that the exception of no cause of action is intended to test the legal sufficiency of the petition itself, not the evidence which may or may not be available at trial to prove what it alleges. *Hero Lands Co. v. Texaco, Inc.*, 310 So.2d 93 (La. 1975).

To state a cause of action for defamation the following must be alleged: defamatory words; publication; falsity; malice (actual or implied); and injury. *Cangelosi v. Schwegmann Bros. Giant Super Markets*, 390 So.2d 196 (La. 1980); *Wiggins v. Creary*, 475 So.2d 780 (La. App. 1st Cir. 1985), *writ denied* 478 So.2d 910 (La. 1985); *O'Dell v. Deich*, 496 So.2d 1074 (La. App. 4th Cir. 1986).

Defamatory words are those which tend to expose a person to contempt, hatred or ridicule, or otherwise de-

prive that person of public confidence or injure him in his occupation or reputation. *Bradford v. Murry,* 467 So.2d 1297 (La. App. 4th Cir. 1985), *writ denied* 469 So.2d 988 (La. 1985); *Freeman v. Cooper,* 414 So.2d 355 (La. 1982). *Restatement of Torts 2d,* Sec. 559 (1977). Statements imputing a crime to another are defamatory, *Cangelosi v. Schwegmann, supra,* as are statements imputing adultery or extramarital sexual relations. *Moreau v. Brenen,* 466 So.2d 572 (La. App. 5th Cir. 1985); *Goldsmith v. Unity Industrial Life Insurance and Sick Ben. Ass'n,* 128 So.2d 182 (La. App. Orleans 1930).

The publication element of a cause of action for defamation is met by alleging that the defamatory statement was made to someone other than the person defamed, even if it is only to a single person. *Toomer v. Breaux,* 146 So. 2d 723 (La. App. 3d Cir. 1962). *Restatement of Torts 2d,* Sec. 577 (1977).

In this case it was alleged that Swaggart and the other defendants made a variety of statements, both oral and written, which falsely and maliciously accused Gorman of repeated acts of adultery and immoral conduct. The petition goes on to allege that the defendants falsely and maliciously accused Gorman of embezzling funds from his church and of having connections with the Mafia. It is also alleged (albeit in a vague and somewhat indirect manner) that the defendants impugned the credit and business practices of MGM to lenders and television stations. It is further alleged that these statements were made and publicized to a wide range of people both inside and outside the Assemblies of God.

Construing these allegations liberally in favor of MGM, we find that they are adequate to state a cause of action for defamation against all defendants. Having reached this conclusion it is unnecessary to address the adequacy of the factual allegations relating to other causes of action in the petition. As long as a cause of action is stated as to *any* of the demands made in the petition, the entire petition must stand and the exception of no cause of action must be overruled. *Lennerts Farms, Inc. v. Rogers,* 426 So.2d 1336 (La. 1982); *Haskins v. Clary,* 346 So.2d 193 (La. 1977); *Elliot v. Dupuy,* 135 So.2d 54 (La. 1961). The trial court erred by holding otherwise and the judgments maintaining the exceptions of no cause of action as to MGM are hereby reversed.

Some of the defendants argue that because they did not make the statements complained of they are not subject to liability and were properly dismissed. We disagree. The petition, as amended, alleges a conspiracy among all the defendants to defame and injure Gorman and MGM. While these allegations may be difficult to prove at trial, we are not concerned at this stage with proof—only with allegations.

Under C.C. Art. 2324(A):

> He who conspires with another person to commit an intentional or willful act is answerable in solido with that person for the damage caused by such act.

Having alleged a conspiracy among all defendants, Gorman and MGM are entitled to an opportunity to prove that allegation at a trial on the merits. See, *Economy Carpets Manufacturers & Distributors Inc. v. Better Business Bu-*

reau of Baton Rouge, 333 So.2d 765 (La. App. 1st Cir. 1976), *writ denied* 334 So.2d 428 (La. 1976); *Ardoyno v. Ungar,* 352 So.2d 320 (La. App. 4th Cir. 1977), *writ denied* 354 So.2d 210 (La. 1978).

We now turn to the difficult questions raised by the granting of the exception of lack of subject-matter jurisdiction. The trial court granted the exceptions based on its belief that the clause in the First Amendment of the United States Constitution which guarantees the free exercise of religion (and the jurisprudence interpreting that guarantee) precluded the exercise of civil jurisdiction over any of the matters raised in the petition. We disagree.

The First Amendment of the United States Constitution and Article 1, Sec. 4 of the Louisiana Constitution both guarantee religious freedom and have been interpreted to forbid courts from interfering in the ecclesiastical matters of religious groups. *The Serbian Eastern Orthodox Diocese for the U.S. and Canada v. Milivojevich,* 426 U.S. 696, 96 S.Ct. 2372 (1976); *Wilkerson v. Battiste* 393 So.2d 195 (La. App. 1st Cir. 1980). This prohibition extends to matters of religious discipline, faith, or custom, as well as to the appointment and removal of ministers. *Milivojevich, supra; Joiner v. Weeks,* 383 So.2d 101 (La. App. 3d Cir. 1980). However, there are limits to this prohibition, and in those cases where religious doctrine is not involved, or may be deferred to, civil courts retain the power to resolve disputes. *LeBlanc v. Davis,* 432 So.2d 239 (La. 1983); *Bourgeois v. Landrum,* 396 So.2d 1275 (La. 1981); *Thomas v. Craig,* 424 So.2d 1090 (La. App. 1st Cir. 1982); *Rose Hill Baptist Church v. Jones,* 425 So. 2d 348 (La. App. 3d Cir. 1982); *Wilkerson v. Battiste, supra.*

In our opinion, this is such a case. In spite of defendants' arguments to the contrary, Gorman clearly is *not* disputing his dismissal as a minister. How could he when his voluntary resignation predated his formal dismissal? This fact alone distinguishes this case from many of those cited by defendants and lessens the impact of their holdings. More important, however, is the fact that Gorman's suit alleges defamatory acts which occurred *outside* the Assemblies of God *after* he had resigned as a member of that denomination and been formally dismissed as one of its ministers.

We have been presented with no plausible argument to justify these allegedly defamatory actions as part of internal church discipline. Moreover, even were we to find that the defendants' post-dismissal statements were legitimately part of internal church discipline, there is a serious question as to whether the First Amendment's protection would extend to those statements allegedly made to the press, the general public and pastors of other denominations. In our opinion, these allegations take the case beyond the scope of an internal religious matter. This court may be powerless to interpret the religious doctrine which defendants claim compelled them to publicize their accusations to other members of their church, however, this does not mean they can make those accusations *outside* their church and not face the legal consequences.

Neither the United States or the Louisiana Constitution provides religious organizations or their members with unqualified blanket immunity from the civil consequences of potentially defamatory statements. To the extent that the Assemblies of God interprets scripture and

its own internal rules to require disclosure of Swaggart's accusations against Gorman to its members as part of the disciplinary process, civil courts may be precluded from interfering, even if the accusations appear to be false or defamatory. However, by taking their accusations outside their church, the defendants have also taken themselves outside the scope of the First Amendment's protection and, to that extent, have exposed themselves to the jurisdiction of the civil courts.

In an attempt to avoid this consequence the defendants contend that their church includes all Christians. This argument must be rejected. To begin with, it would allow the Assemblies of God to treat Christians who do not subscribe to their particular brand of Christianity as if they were members of the Assemblies of God, possibly violating the First Amendment rights of these non-Assemblies of God Christians. Moreover, as this case so vividly illustrates, there is a very real danger that this "universal church" argument would lead to claims that any religious decision by the Assemblies of God could be extended to any Christian. In addition, this argument ignores the fact that defendants' accusations concerning Gorman and MGM were allegedly repeated to non-Christians, atheists and agnostics. Even the most liberal attitude toward freedom of religion cannot cloak the dissemination of defendants' accusations to these groups in the mantle of the First Amendment.

Given the allegations of broad publication of defamatory statements beyond the confines of the Assemblies of God, we find that the civil courts of Louisiana have subject matter jurisdiction over this suit and the trial court's

ruling to the contrary is reversed. The parameters of the relief which can be granted in the event that Gorman and MGM are successful are obviously fixed by the constitution and the law on qualified privileges. However, the task of defining these limits must be left to the district court and will depend in large part on the facts developed at trial.

For the foregoing reasons, the judgments maintaining the exceptions of no cause and no right of action as to MGM and the exception of lack of subject matter jurisdiction as to Gorman are reversed and the case remanded to the district court for further proceedings consistent with this opinion and the law. The exception of no right of action, filed the day of oral argument by defendant Michael Indest, has been rendered moot by the substitution of the bankruptcy trustee as plaintiff in place of MGM & Gorman.

REVERSED AND REMANDED

APPENDIX VI

COURT OF APPEAL, FOURTH CIRCUIT
STATE OF LOUISIANA

Clerk's Office, New Orleans, May 11, 1988

Dear Sir:

Rehearing was this day refused in the case entitled *Gorman, et al v. Swaggart, et al* No. CA-8757.

(ALL SEVEN APPLICATIONS)

Very truly yours,
DANIELLE A. SCHOTT
CLERK OF COURT

APPENDIX VII

THE SUPREME COURT OF THE
STATE OF LOUISIANA

MARVIN GORMAN AND MARVIN GORMAN
MINISTRIES, INC.

VS. NO. 88-C-1375

JIMMY SWAGGART, JIMMY SWAGGART
MINISTRIES, INC., WILLIAM D. TREEBY,
THE FIRST ASSEMBLY OF GOD CHURCH
OF NEW ORLEANS, LOUISIANA INC.
LOUISIANA DISTRICT COUNCIL OF THE
ASSEMBLIES OF GOD, INC., THE GENERAL
COUNSEL OF THE ASSEMBLIES OF GOD,
LAKEVIEW CHRISTIAN CENTER CANAL
ST. ASSEMBLY OF GOD, INC., MICHAEL
INDEST, TOM MILLER, CECIL JANWAY,
WALDO RISNER, ALLAN MCDONNEL AND
DON BRANKEL

IN RE: First Assembly/God Church N.O.; Risner, Waldo; Applying for Writ of Certiorari and/or Review; to the Court of Appeal, Fourth Circuit, Number CA-8757; Parish of Orleans Civil District Court Div. "K" Number 87-5289

September 23, 1988
Denied.

LFC
JAD
WFM
JCW

DENNIS, J., would grant the writ.

LEMMON, J., votes to grant on the issue of the corporation's cause of action for defamation.

Supreme Court of Louisiana
September 23, 1988

/s/ Frans J. Labranche, Jr.
Clerk of Court
For the Court

APPENDIX VIII

SUPREME COURT
STATE OF LOUISIANA

NOS. 88-C-1375
88-C-1435
88-C-1465
88-C-1468

MARVIN GORMAN, ET AL.
VERSUS
JIMMY SWAGGART, ET AL.

ORDER

Considering the Motion and Memorandum submitted on behalf of defendants Jimmy Swaggart, Jimmy Swaggart Ministries and William D. Treeby,

IT IS ORDERED that the judgment rendered April 22, 1988 by the Fourth Circuit Court of Appeal in Civil Action No. 8757 is stayed and that all further pre-trial proceedings in this matter be stayed pending the timely filing by the defendants of an application to the United States Supreme Court for a writ of certiorari and the final resolution of said application by the United States Supreme Court.

New Orleans, Louisiana this —— day of October, 1988.

JUDGE

10/14/88
Stay Denied.
P.F.C.

APPENDIX IX

OFFICIAL STATEMENT

Date: July 20, 1986

This is an official statement from the Board of Directors to the members of the First Assembly of God church, New Orleans, La., Inc. expressing love and concern for Reverend Marvin E. Gorman and his ministry.

The official bylaws of this Assembly states, "the tenure of office in the pastorate shall be terminated by resignation, removal, death, or disqualification. The Board of Directors did not ask for Reverend Marvin E. Gorman's resignation, but he voluntarily submitted it to them and the congregation Wednesday, July 16, 1986. A signed statement was submitted by Brother Gorman stipulating his resignation.

Some of what you have been hearing on television and reading in the newspaper is true, some of it is not true. We must let the truth and the light it brings make clear what is happening and what has happened.

Brother Gorman resigned as pastor voluntarily when faced with the facts that he had been involved in two known immoral affairs involving different married women. One of these immoral affairs continued over three years. He stated that he had confessed these affairs to God and had received forgiveness. But he had never confessed them to the husband of one of these women and had lied about involvement in such affairs on several occasions. All the facts were discussed with him and he admitted to several witnesses per 1 Timothy 5:19, "*Against an elder receive not an accusation, but before two or three wit-*

nesses.'' The facts are true. It would serve no purpose to name the other individuals involved but Brother Gorman cannot continue as an Assembly of God minister with these blemishes on his life without submitting himself to rehabilitation through the offices of the Assemblies of God.

The word of God states, "A bishop then must be *blameless,* the husband of one wife, vigilant, sober, *of good behavior,* given to hospitality, apt to teach:'' 1 Timothy 3:2.

This is not a question of his salvation. Based on his own confession he has lost the right according to scripture to serve. If he has repented he has not lost his right to Heaven. Further, 1 Timothy 5:20, speaking of elders and pastors, states that the elder must be rebuked publicly, ''Them that sin rebuke before all, that others also may fear.''

This statement contradicts some of what has been said on television, and some of what has been reported in the newspaper. But this entire Board, who love Brother Gorman and have been unswervingly loyal to him for these many years has investigated the facts fully and carefully, and agree these are the true facts and they must be known. Since these facts are true, the church has no choice but to do what Brother Gorman himself, as a denominational leader, required churches and pastors on many occasions to do. He had to resign and he willingly did so.

APPENDIX X

From the office of
JIMMY SWAGGART

August 20, 1986

Reverend Cecil T. Janway
District Superintendent
Assemblies of God
2717 W. MacArthur Drive
Alexandria, LA 71303

Dear Brother Janway,

Choice Christian greetings.

I trust this finds you well and enjoying the blessings of the Lord. We have been praying for you concerning the physical difficulties and we trust that the situation is improving.

It has been called to our attention that the possibility exists you may believe Marvin Gorman's story concerning the recent difficulty. By that, I mean what he is telling about the immoral affair being a one-time event that transpired about seven years ago.

Brother Janway, nothing could be further from the truth and a statement is enclosed concerning the order of events.

Brother Gorman confessed to two different immoral dalliances. However, he only did that when the women involved confessed and he had no alternative nor choice. His confession was made in front of several witnesses, including myself. The other witnesses included Bill Treeby, Jim Rentz, Mike Indest, and David Savage.

It is my understanding that Marvin had no sooner left our presence than he began fabricating a story as to what had happened, namely the one-time, seven years ago scenario. Everyone I have spoken with who has talked to him has stated that Marvin told the same story to them.

Brother Janway, this does not show repentence, much less any type of rehabilitation.

Consequently, if it is true that you believe his story you are believing it contrary to the testimony of many witnesses.

Brother Gorman's case must be handled in exactly the same manner as any other minister of the Gospel in our District—no more, no less.

I am certainly not doubting your ability to handle the situation but I am very alarmed at the "rumor" concerning the believing of his story. I want it to be clearly understood that I will take whatever steps I feel are necessary to see that this situation is not covered up and that Marvin is not treated differently than any other minister would be treated.

Our prayers are with you, that God will give you wisdom and guidance in these most trying times. We face the situation with a heavy heart. We all seek the leading and the guidance of the Holy Spirit that we may do exactly what the Spirit of God would desire.

In the Master's service, yours,
/s/ Jimmy Swaggart

Jimmy Swaggart

JS/lw

COPY:

Executive Presbyters of Louisiana
Reverend G. Raymond Carlson
Reverend Richard Dobbins
Reverend Forrest Hall
Reverend Mike Indest
Reverend Don Logan
Reverend Carl Miller
Reverend David Savage
Reverend Everett Stenhouse
Mr. Bill Treeby

APPENDIX XI

DATE: SEPTEMBER 2, 1986

TO: THE FELLOW BELIEVERS AND CONGREGATION OF FIRST ASSEMBLY OF GOD OF NEW ORLEANS, LA., INC.

FROM: REVEREND CECIL JANWAY, DISTRICT SUPERINTENDENT OF THE LOUISIANA DISTRICT COUNCIL OF THE ASSEMBLIES OF GOD, INC.

On Sunday, July 20, 1986, your Board of Directors made a statement to the congregation in its three morning services explaining the basis for the resignation of Marvin E. Gorman as pastor. A continuation of comments, conflicting statements, and misleading explanations leads me to repeat and add to that first statement. The Louisiana District Council of the Assemblies of God, with the concurrence and agreement of the General Offices of the Assemblies of God, makes the following declarative statement in cooperation with First Assembly's Board of Directors, its interim pastoral committee, its pastoral staff, and its entire congregation.

This is no time for a vengeful spirit, for a retaliatory attitude, for vindictiveness, for pious self rightousness, or for taking pleasure in another's suffering. At the same time it is necessary for me to speak out of the conviction of my heart, in love. The love of Calvary cannot allow the body of Christ to be led into error. Those who are spiritual leaders have accountability to God to preach the Gospel both by precept and by example. Leaders must put the welfare of the people under their influence and ministry ahead of their own interest.

The manner in which members and supporters of First Assembly have been contacted directly and indirectly by Marvin E. Gorman demonstrates a blatant disregard for ministerial ethics. Such conflict and the misleading message being given shows an absence of christian love. There has been a disregard for unity and harmony in the body of Christ and the local Assembly. The responsibility for confusion, discord, and strife coming from some media messages and the personal contacts lies at the feet of Marvin E. Gorman and individuals coming to his defense, presumpably out of ignorance of the true facts. We find this tragically unscriptural, misleading, and detrimental to the spiritual well being of all believers.

Although it hurts me deeply to do so, I must inform you as a fellow believer, spiritual leader, and as an extremely close friend of Marvin E. Gorman over many years; I believe that your board's statement on July 20, 1986 was completely true and accurate. In addition, more evidence has been presented to me and the Executive Officers of the Assemblies of God that makes it clear that the information spread by Marvin E. Gorman concerning his conduct has been incomplete and misleading. A local television broadcast was aired last week in which Marvin Gorman repeatedly stated that most, or 95%, or what was being said about him was lies. He did not say who lied or what was lied about, and this simply causes confusion. To my knowledge Marvin E. Gorman has no enemies in this district or in this church. All these men love Marvin Gorman and are praying for him to do the right thing. Established evidence and facts prove that Marvin E. Gorman engaged in multiple immoral incidents over a period of years which included adultery, illicit affairs, and un-

scriptural lascivious conduct with women who came to him for counseling. I have a statement from a woman telling of his conduct with her this year which was unbecoming to a minister.

We cannot minimize the loathesomeness of sin or the horrendous consequences of sin and the damage, hurt, and pain it can bring to an individual, family, church, community, or nation. "Righteousness exalteth a nation but sin is a reproach to any people."

Sin, or transgression, must be faced up to, confessed, brought to heart-wrenching repentance, turned from, renounced, put under the blood, and forsaken. Sincere requests for forgiveness should be sought by the sinner from those personally sinned against.

The accountability for sin lies at the door of every human heart, subject to every human will. No one puts a gun to our head to make us sin—it is a volitional act of free will. There is no excuse that satan trapped us, that we were seduced, and ensnared. Such excuses will be of no value at the judgment seat. "Rather, every man must give an account of himself for every deed done in the body."

You do not make excuses for sin. You acknowledge your sinfulness and your sin. You do not parade your sin as a means of self-aggrandizement and gain—by explaining it—justifying it—or blaming its cause on someone else. It seems this is what is being done by Marvin E. Gorman and for Marvin E. Gorman by others.

Statements have been made locally and nationally on television ministries reflecting on the judgment, action,

and integrity of your church board, congregation, and your pastoral staff that the Louisiana District Council and the General Council of the Assemblies of God totally disagree with and oppose. A local television broadcast, last week, by Marvin E. Gorman, gave some the impression that myself and other district officials, as well as some national officers, of the Assemblies of God, had somehow endorsed or approved of his continued ministry. Any such implication is erroneous, unfounded, and without permission.

There are national ministries recognized and endorsed by the Louisiana District Council and the General Council of the Assemblies of God. Marvin Gorman Ministries is not one of them now, and in fact has never been one of them.

Speaking for the Louisiana District Council, as district superintendent, I want to be crystal clear. Marvin Gorman gave up his credential, his ordination, as a minister of the Gospel with the Assemblies of God. He did so voluntarily on Wednesday, July 16, 1986. By his action he expressly chose not to seek rehabilitation and restoration to fellowship. This means he is not able to pastor an Assembly of God church, now or in the future unless he repents and submits himself to the rehabilitation process.

If he expresses true repentance and submission to the rehabilitation process prescribed by the Constitution and Bylaws of the General Council of the Assemblies of God and the Louisiana District Council he can seek restoration and reinstatement. He has not taken any steps in this direction up to this point.

The rehabilitation process is provided to allow an erring brother or elder the opportunity to experience restorative grace as set forth in scripture:

Galations 6:1, "Brethren, if a man be overtaken in a fault, ye which are spiritual restore such a one in the spirit of meekness: considering thyself, lest thou also be tempted."

James 5:19-20, "Brethren, if any of you do err from the truth, and one convert him: Let him know, that he which converteth the sinner from the error of his way shall save a soul from death, and shall hide a multitude of sins."

The question is asked, if God has forgiven, why can't man forgive? The answer is everyone I know connected with the matter has expressed love and forgiveness to Marvin E. Gorman. But an elder and minister of the Gospel must be above reproach. If Marvin Gorman fully confesses and repents God will forgive him, and by the process of time and proven performance, Marvin Gorman can be restored. Let us continue to pray that this will take place.

APPENDIX XII

10. The Church and Its Mission

The Church is the body of Christ, the habitation of God through the Spirit, with divine appointments for the fulfillment of her great commission. Each believer, born of the Spirit, is an integral part of the general assembly and church of the firstborn, which are written in heaven (Ephesians 1:22,23; 2:22; Hebrews 12:23).

Since God's purpose concerning man is to seek and to save that which is lost, to be worshiped by man, and to build a body of believers in the image of His Son, the priority reason-for-being of the Assemblies of God as part of the Church is:

a. To be an agency of God for evangelizing the world (Acts 1:8; Matthew 28:19,20; Mark 16:15,16).

b. To be a corporate body in which man may worship God (1 Corinthians 12:13).

c. To be a channel of God's purpose to build a body of saints being perfected in the image of His Son (Ephesians 4:11-16; 1 Corinthians 12:28; 14:12).

APPENDIX XIII

ARTICLE IX. DISCIPLINE

A. District Action

Section 1. The Nature and Purposes of Discipline

Discipline is an exercise of scriptural authority for which the church is responsible. The aims of discipline are that God may be honored, that the purity and welfare of the ministry may be maintained, and that those under discipline may be brought to repentance and restoration.

Discipline is to be administered for the restoration of the minister, while fully providing for the protection of the spiritual welfare of our local assemblies. It is to be redemptive in nature as well as corrective and is to be exercised as under a dispensation of mercy.

Section 2. Causes of Disciplinary Action

Violation of Assembles of God principles as stated in these Constitution and Bylaws may give cause for disciplinary action by the Credentials Committee. Among such causes for action shall be:

a. Any conduct unbecoming to a minister or indiscretions involving morals.

b. General inefficiency in the ministry.

c. A failure or inability to represent our Pentecostal testimony correctly.

d. A contentious or noncooperative spirit.

e. An assumption of dictatorial authority over an assembly.

f. An arbitrary rejection of district counsel.

g. A declared open charge in doctrinal views.

h. A habit of running into debt which brings reproach upon the cause.

i. A marriage in violation of our stand on marriage and divorce. (See Article VIII, B, Section 5, paragraphs d and e.)

j. Violations of ministerial courtesy. (See Article VIII, B, Section 8.)

k. Ministry without prior approval in a non-Assemblies church. (See Article VII, B, Section 9.)

l. An improper attitude toward those dismissed from the Fellowship. (See Article VIII, B, Section 10.)

Section 3. Initiative

a. Authority. Occasions sometimes arise which make it necessary to deal with ministers who for some reason seem to have reached the place where, in the opinion of the brethren, endorsement can no longer be given. Credentials committees which have the authority to ordain ministers and to recommend them for credentials also have the right to withdraw their approval and to recommend the recall of credentials.

b. Prior right of district. The officiary of the district in which the alleged offense is reported to have occurred shall be recognized as having the prior right of initiative in matters of discipline. Reports or complaints against a minister, alleging violations of Assemblies of God principles (Article IX, A, Section 2), filed with the Credentials Committee of The General Council of the Assemblies of God, shall be referred to the district in which the offense occurred for investigation and such action as the revealed facts may warrant. A copy shall be sent to the minister's home district.

c. Responsibility of home district. If the district in which an alleged offense is reported to have occurred for some reason cannot take action, the Credentials Committee of The General Council of the Assemblies of God shall refer the matter, together with the facts and supporting instruments, to the district with which the minister is affiliated.

d. Responsibility of General Council Credentials Committee. In the event the district fails to take action within 90 days after a matter has been referred to it, it shall be the responsibility of the Credentials Committee of The General Council of the Assemblies of God to see that action is initiated.

Section 4. Investigation of Reports or Complaints of Alleged Violations of Assemblies of God Principles

a. Within United States. When a report or complaint of alleged violations by a minister is received, the superintendent of the district in which the alleged offense is reported to have occurred, and/or an appointed representative, shall make an investigation, having in mind that it is his responsibility to safeguard the church, the minister, the district, and the Fellowship. This shall be done to determine the source of the report or complaint.

(1) *Interview with complainant(s).* The persons involved shall be interviewed in order to ascertain the facts in the case and the reasons underlying the persistence of the reports or complaints.

(2) *Interview with accused minister(s).* The accused minister(s) shall be given an opportunity to be interviewed to discuss with him/her the complaints received against him/her in the hope that the matter can be resolved.

(3) *Signed complaints.* In the event the investigation so warrants, signe dcomplaints shall be filed with the district office by the complainant(s) describing the alleged violations.

(4) *Suspension for extended investigation or minor violations.* If the time required for the investigation exceeds 3 months and additional time is required to determine the validity of the complaints or charges, a minister may be placed under suspension for a period not to exceed 3 months in order to complete the investigation. This provision may also be applied for some minor infraction not meriting rehabilitation or dismissal, and which can be resolved within the above time frame, subject to renewal if deemed necessary.

b. Outside United States. In case the alleged misconduct occurs outside the United States in an area the general oversight of the Division of Foreign Missions, that division shall take the initiative to place complete data in the hands of the home district of the minister involved. Any hearing or trial affecting that individual's ministerial credentials shall be held in the home district. The Division of Foreign Missions shall convey all information available to the home district in the following manner.

(1) *Report to home district.* At the earliest date after the Division of Foreign Missions receives a report of misconduct, such report shall be conveyed by telephone and by letter to the superintendent of the home district of the minister or missionary, with a copy to the district missionary secretary.

(2) *Confidential file.* A confidential file shall be submitted to the superintendent, conveying to him all information as it becomes available to the division. A final complete file shall be prepared under the direction of the field director of the field involved and shall be presented to the district superintendent for his use in any action the district may take.

(3) *Additional information.* When in the judgment of the Division of Foreign Missions or the distract involved, basic information is lacking (which information may be available at the site of the alleged misconduct), arrangements may be made for the gathering of such.

Section 5. Preparation and Filing of Charges

If after due investigation it is determined that charges should be made, proper charges shall be prepared and filed in the district office. If no one appears to sign the charges, members of the district officiary making the investigation may prefer charges based on the evidence in their possession. The person against whom charges have been filed shall be informed in writing by certified mail of the charges made in keeping with Article IX, Section 2.

Section 6. District Hearing and Discipline

In the event the reports or complaints cannot be dealt with privately to the satisfaction of all concerned, the superintendent of the district in which the alleged offense is said to have occurred, or the superintendent of the district with which the minister is affiliated, shall arrange for a hearing by the district credentials committee for the accused minister. The minister shall be requested to appear at the hearing in the hope the matter can be resolved.

A hearing shall not be considered as final disposition of the case until the accused be present and be allowed all rights and privileges granted herein; provided, however, an accused member may be disciplined and found guilty of charges preferred, if he refused to appear at the hearing, or proof is found of willful neglect on his part to take advantage of his rights and privileges.

If the district determines that guilt has been established, discipline shall be administered prayerfully and in the fear of God, in accordance with the Scriptures, and as set forth in the Constitution and Bylaws of this ecclesiastical body.

Section 7. Credentials Terminations

In all cases the minister shall be requested to surrender his Certificate of Ordination and his current fellowship card to the district office. The district shall forward these to the office of the general secretary of The General Council of the Assemblies of God. Refusal to surrender his Certificate of Ordination and current fellowship card shall be considered insubordination and may result in placing a charge against the minister. Credentials terminations may occur in the following manner:

a. On the initiative of the minister.

(1) *Lapsed.* A minister who does not elect to renew his credentials, providing there is no cause for disciplinary action, shall be listed as having "lapsed." His name shall be published as "lapsed" in the Assemblies of God Minister, hereinafter referred to as the ministers letter.

(2) *Resigned.* A minister who has elected to remove himself from the Fellowship, and against whom there are no charges filed, shall be published in the ministers letter as "resigned." In the event of the announced desire of a minister to resign from our Fellowship, before action shall have been taken in the matter either by the district or the Credentials Committee of The General Council of the Assemblies of God, due investigation shall be made as to the standing of the minister in the district of his affiliation. His request shall be granted, provided he is found in good standing. In case the evidence warrants contrary action, the minister shall be advised of the find-

ings, and appropriate disciplinary action shall be taken. All information pertaining to the disciplinary action taken against the minister shall be preserved for future references in the office of the Credentials Committee of The General Council of the Assemblies of God.

b. On the initiative of the district. (See Article IX, A, Section 3.)

(1) *Dismissed.* A minister who has been found guilty of violating any of the Assemblies of God principles set forth in Article IX, A, Section 2, shall be subject to disciplinary action by the Credentials Committee. Said discipline shall be administered in brotherly love and kindness in an effort to lead the offending minister through a program of rehabilitation (Article IX, A, Section 9). The Credentials Committees shall weigh decisions on the basis of the offense itself, the attitude of the offending minister toward the discipline, the manner and thoroughness of his repentance, the desire he manifests to cooperate, and the possibility of success in his rehabilitation. In the event rehabilitation is not feasible or fails, the minister shall be listed as having been dismissed. His name shall be published as dismissed in the ministers letter.

(2) *Inactive.* When a minister becomes inactive for 2 consecutive years, according to the stipulations set forth in Article VII, Section 7, paragraph b, of the bylaws, his name shall be published as inactive in the ministers letter.

(3) *Not renewed.* If in the opinion of the Credentials Committees a minister's credentials should not be renewed short of disciplinary action, has name shall be published as not renewed in the ministers letter.

(4) *Publication only after notification.* No publication of disciplinary action shall be made until the district has been advised by the office of the general

secretary that such has been authorized by the Credentials Committee of The General Council of the Assemblies of God.

c. As a result of affiliation with other church organizations. In the event a minister shall identify himself with another organization granting ministerial credentials, and shall have received such credentials, he shall then be requested by the district to surrender his Certificate of Ordination and his current fellowship card to the district office. The district shall forward these to the office of the general secretary of The General Council of the Assemblies of God. An investigation shall be made to determine the proper category of termination.

Section 8. Referral for Action to the Credentials Committee of The General Council of the Assemblies of God.

a. District recommendation. If it is determined that a minister's credentials are to be terminated, the district shall recommend to the Credentials Committee of The General Council of the Assemblies of God that his name be removed from the official list of ministers, in accordance with Section 7 of this article. Such recommendation shall set forth in writing satisfactory reasons for the action. Copies of these charges and recommendations shall be forwarded to the said Credentials Committee, to the minister involved, and to the superintendent of the home district.

b. General Council Credentials Committee action. The said Credentials Committee shall be authorized to comply with the request of the district if in its judgment the district was justified in the action taken. If the said Credentials Committee finds that the justice has not been served, it may refer the case, together with its recommen-

dations, back to the district for review and reconsideration. Disposition of the case shall await further report from the district.

c. Right of appeal. Thirty days from the date of the notification of the decision of the Credentials Committee of The General Council of the Assemblies of God shall be allowed for the accused to request a trial. He shall be apprised officially of this right at the time the decision of the Credentials Committee of The General Council of the Assemblies of God is made.

Section 9. Rehabilitation

When it has been determined, either by a confession of the minister involved or by deliberation of the district presbytery, that there is a cause for disciplinary action as a result of a violation of Assemblies of God principles as set forth in Article IX, A, Section 2, it shall then be the responsibility of the district presbytery to determine whether or not the offense warrants expulsion from the Fellowship by dismissal or restoration to good standing in the Fellowship through a program of rehabilitation. Recognizing that the underlying principle involved in discipline is redemptive, and that man's conscience frequently brings him to judgment and confession, and that justice can sometimes best be served with mercy; therefore, the following provisions for rehabilitation shall apply:

a. Basis. Those found to have violated any of the Assemblies of God principles (Article IX, A, Section 2) shall be subject to a period of rehabilitation.

b. Period of time. The period of rehabilitation shall be not less than 1 year except when the violation involves

misconduct defined in Article IX, A, Section 2, paragraph a. in which case it shall be for not less than 2 years.

c. Procedure and requirements. The following procedure shall be used by the district presbytery in determining the specific requirements of rehabilitation for the individual minister.

(1) *Suspension.* The minister shall be considered to be under suspension during the entire period of rehabilitation, and his credentials shall be held in the district office. The extent to which he may be permitted to minister, if any, shall be determined by the district presbytery. Certain offenses may not require complete cessation of ministerial activities, although some restrictions or limitations may be warranted.

(2) *District member with conditions.* The minister must remain a member of the district during the period of rehabilitation. While his credentials are in a state of suspension, his name shall not be published as removed from the ministerial roster. In the event his ministerial activity has been terminated, the minister must become established in a local church working under the supervision of a pastor and presbyter.

(3) *District progress reports.* The Credentials Committee of the district shall submit to the Credentials Committee of the General Council on February 1 and August 1 of each calendar year a progress report relative to the rehabilitation of ministers under discipline.

(4) *Minister's reports.* The minister must submit reports quarterly to the district superintendent.

(5) *Classified information.* The rehabilitation record shall not accompany the Certificate of Transfer to another district. The information shall be preserved for future reference in the files of the district and the Credentials Committee of The General Council of the Assemblies of God.

(6) *Completion of rehabilitation.* When the rehabilitation period is satisfactorily completed, the minister shall be considered in good standing and his credentials restored.

(7) *Terms subject to district discretion.* The terms of rehabilitation as above stated shall be administered at the discretion of the district presbytery.

(8) *Ministerial benefits not forfeited.* During the period of rehabilitation the minister shall continue to be eligible for benefits such as the Ministers Group Insurance and Ministers Benefit Association.

d. Eligibility for rehabilitation.

(1) *Previous dismissal.* In the event a minister who has been dismissed shall later show repentance and indicate his desire for reinstatement, he shall, upon obtaining the approval of the district, enter the appropriate rehabilitation program as prescribed in Section 9, paragraph b, of this article, with the provision that he shall not be eligible for reinstatement until the requirements of the program have been satisfactorily completed.

(2) *Previous rehabilitation.* In the event a minister has undergone a previous rehabilitation experience, and/or has a record of a prior violation(s) of Assemblies of God principles necessitating disciplinary action as defined in Article IX, A, Section 2, permission for rehabilitation shall be granted only by the General Council Credentials Committee and terms of such rehabilitation shall be approved by that body.

Section 10. Restoration of Credentials

a. Minimal time-lapse for dismissed minister. For a minister who is listed as "dismissed," the minimal

time-lapse required before he/she is eligible to apply for reinstatement shall be 1 year, except that a minister who is dismissed because of charges as stated in Article IX, A, Section 2, paragraph a, the minimal time-lapse shall be 2 years. The time-lapse shall be computed from the date of the district presbytery action as it appears on the termination report filed with the Credentials Committee of The General Council of the Assemblies of God. (See Bylaws Article VII, Section 6, for other renewals and reinstatements.)

b. Rehabilitation requirement obligatory. When a minister has been dismissed from our Fellowship and applies for reinstatement, it shall be the responsibility of the district council and General Council credentials committees to determine if he should go through the formal rehabilitation program, or if he has satisfactorily fulfilled the remedial requirements of such rehabilitation as outlined in Bylaws Article IX, A, Section 9, paragraph c.

c. Option to refer to General Presbytery. The Credentials Committee may also hold reinstatement of a minister's credentials in abeyance until the next session of the General Presbytery in order that the General Presbytery may have the opportunity to review the case, in which event the matter of reinstatement of such minister may be left entirely with that body.

d. Authorization. Application for reinstatement may be made through the district council within which territory the applicant resides. The applicant shall be considered subject to the approval of the district in which the termination was made.

e. Terminology

(1) *Renewed.* The term renewed shall be used to apply strictly to those who for inadvertent reasons fail to comply with the annual deadline of January 31, but do renew with said renewal bearing a postmark of not later than February 15.

(2) *Reinstatement.* The term *reinstatement* shall apply to all those whose names have been deleted from the official ministerial list for whatever reason and have paid a $50 reinstatement fee to be divided equally between the district and General Council offices, and received district clearance for restoration to the ministerial list. (See also Article IX, B, Trial by Jury, Section 15.)

APPENDIX XIV

10. The Church and its Mission

The Church is the Body of Christ, the habitation of God through the Spirit, with divine appointments for the fulfillment of her great commission. Each believer, born of the Spirit, is an integral part of the General Assembly and Church of the First-born, which are written in heaven (Ephesians 1:22, 23; 2:22; Hebrews 12:23).

Since God's purpose concerning man is to seek and to save that which is lost, to be worshipped by man, and to build a body of believers in the image of His Son, the priority reason-for-being of the Assemblies of God as part of the Church is:

a. To be an agency of God for evalgenizing the world (Acts 1:8; Matthew 28:19, 20; Mark 16:15, 18).

To be a corporate body in which man may worship God (1 Corinthians 12:13).

To be a channel of God's purpose to build a body of saints being perfected in the image of His Son (Ephesians 4:11-16; 1 Corinthians 12:28; 1 Corinthians 14:12).

APPENDIX XV

ARTICLE VI—MINISTRY

Section 9. Termination of Credentials (Non-Disciplinary).

A. Categories:

1. Resigned: A minister who has elected to remove himself from the Fellowship, and against whom there are no charges filed.
2. Lapsed: Those who elect or fail to renew their credentials by the specified time.
3. Removal from Ministerial List Due to Insufficient Active Ministry: Those who do not preach the required number of times are placed on an inactive list for one year, and if such inactivity continues a second year, their names are eliminated from the ministerial list.
4. Affiliation with Other Church Organizations: In the event a minister shall identify himself with another organization granting ministerial credentials, and shall have received such credentials, he shall then be requested by the District to surrender his Certificate of Ordination and his current Fellowship Certificate to the District office. The same requirement pertains to those holding License or Christian Workers papers.

B. Responsibility of Credentials Committees.

1. Investigation: Before final action in terminating a minister's credentials shall have been taken by either the District or General Council Credentials Committee, due investigation shall be made as to whether there is any cause for disciplinary action.

2. Approval of Termination: If the minister shall be found to be in good standing, the termination shall be approved.

3. Cause for Disciplinary Action: In case the evidence warrants contrary action, the minister shall be advised of the findings, and appropriate disciplinary action shall be taken.

4. Surrender of Credentials: In all cases of termination of current credentials, the minister shall be requested by the District to surrender these. Credentials of ordained ministers shall be forwarded to the General Secretary's Office. Refusal to surrender his Certificate of Ordination and current Fellowship Certificate shall be considered insubordination and may result in placing a charge against the minister.

5. Notification of Action: It shall be the responsibility of the District officiary to notify the office of the general secretary of actions taken in the termination of ordained and licensed ministers, and to fill out and send to that office a Ministerial Status Report form. All information pertaining to the disciplinary action taken against a minister shall be preserved for future reference in the office of the credentials committee of The General Council of The Assemblies of God.

6. Publication of Termination: The names of ordained ministers who are 'lapsed' or who have 'resigned' shall . . .

ARTICLE XI—DISCIPLINE AND TRIALS

Section 1. The Nature and Purposes of Discipline.

Discipline is an exercise of scriptural authority for which the church is responsible. The aims of discipline are that God may be honored, that the purity and welfare of the ministry may be maintained, and that those under discipline may be brought to repentance and restoration.

Discipline is to be administered for the restoration of the minister, while fully providing for the protection of the spiritual welfare of our local Assemblies. It is to be redemptive in nature as well as corrective, and is to be exercised as under a dispensation of mercy.

Section 2. Causes of Disciplinary Action.

Violation of Assemblies of God principles as stated in these Constitution and By-Laws may give cause for disciplinary action by the Credentials Committee. Among such causes for action shall be:

A. Any conduct unbecoming to a minister or indiscretions involving morals.

B. General inefficiency in the ministry.

C. A failure or inability to represent our Pentecostal testimony correctly.

D. A contentious or noncooperative spirit.

E. An assumption of dictatorial authority over an assembly.

F. An arbitrary rejection of District counsel.

G. A declared open change in doctrinal views from the Tenets of the Faith.

H. A habit of running into debt which brings reproach upon the cause.

I. A marriage in violation of our stand on marriage and divorce.

J. Violation on ministerial courtesy.

K. Ministry wthout prior approval in a non-Assemblies church.

L. An improper attitude toward those dismissed from the Fellowship.

Section 3. Initiative.

A. Authority: Credentials committees, which have the authority to ordain ministers and to recommend them for credentials, also have the right to withdraw their approval and to recommend the recall of credentials.

B. Prior Right of District in Which the Alleged Offense Occurred: The officiary of the District in which the alleged offense is reported to have occurred shall be recognized as having the prior right of initiative in matters of discipline. Reports or compliance against a minister, alleging violations of Assemblies of God principles, filed with the Credentials Committee of The General Council of the Assemblies of God shall be referred to the District in which the offense allegedly occurred for investigation and such action as the revealed facts may warrant. A copy of the referral shall also be sent to the minister's home District.

C. Responsibility of the Minister's Home District: If the District in which an alleged offense is reported to have occurred, for some reason, cannot take action, the Credentials Committee of The General Council of the Assemblies of God shall refer the matter, together with the facts and supporting instruments, to the District with which the minister is affiliated.

D. Responsibility of the General Council Credentials Committee: In the event the District fails to take action within ninety days after a matter has been referred to it, it shall be the responsibility of the Credentials Committee of The General Council of the Assemblies of God to see that action is initiated.

Section 4. Investigation of Reports or Complaints of Alleged Violations of Assemblies of God Principles.

A. Alleged Misconduct Within the United States: When a report or complaint of alleged violations by a minister is received, the Superintendent of the District in which the alleged offense is reported to have occurred, and/or an appointed representative, shall make an investigation, having in mind that it is his responsibility to safeguard the church, the minister, the District, and Fellowship. This shall be done to determine the source of the report or complaint. The persons involved shall be interviewed in order to ascertain the facts in the case and the reasons underlying the persistence of the reports or complaints, after which the accused minister shall be interviewed. In the event the investigation produces just cause for relief that a violation has occurred, signed complaints shall be filed with the District office by the Superintendent or his appointed representative describing the

alleged violation. These complaints should be signed by the complaining witness or witnesses, by the District Superintendent, or by the District Superintendent's appointed representative.

B. Alleged Misconduct Outside the United States: In case the alleged misconduct occurs outside the United States in an area under the general oversight of the Foreign Missions Division, that division shall take the initiative to place complete data in the hands of the home District of the minister involved. Any hearing or trial affecting the Foreign Missions Division shall convey all information available to the home District in the following manner:

1. Report to Home District: At the earliest date after the Foreign Missions Division receives a report of misconduct, such report shall be conveyed by telephone and by letter to the Superintendent of the home District of the minister or missionary, with a copy to the District missionary secretary.

2. Submission of Confidential File: A confidential file shall be submitted to the appropriate District Superintendent, conveying to him all information as it becomes available to the division. A complete file shall be prepared under the direction of the field secretary of the field involved, and shall be presented to the District Superintendent for his use in any action the District may take.

3. Additional Information: When in the judgement of the Foreign Missions Division or the District involved, basic information is lacking (which information may be available at the site of the alleged misconduct), arrangements may be made

for the gathering of that information through the Foreign Missions Division.

Section 5. Preparation and Filing of Charges.

If after due investigation it is determined that there is just cause to believe that a violation has occurred, proper charges shall be prepared and filed in the District office, signed in accordance with Section 4(a) above. Members of the District officiary making the investigation may prefer charges based on the evidence in their possession. The person against whom charges have been filed shall be informed in writing of the charges made by certified mail, return receipt requested.

Section 6. District Hearing and Discipline.

In the event the reports or complaints cannot be dealt with privately to the satisfaction of all concerned, the Superintendent of the District in which the alleged offense is said to have occurred, or the Superintendent of the District with which the minister is affiliated, shall arrange for a hearing by the District Credentials Committee for the accused minister. The minister shall be requested to appear at the hearing in the hope the matter can be resolved.

A hearing shall not be considered as final disposition of the case until the accused be present and be allowed all rights and privileges granted herein: Provided, however, an accused member may be disciplined and found guilty of charges preferred, if he refuses to appear at the hearing, or if the accused minister is found guilty willfully neglecting to take advantage of the rights and privileges afforded by these By-Laws.

If the District Credentials Committee determines that guilt has been established, discipline shall be administered prayerfully and in the fear of God, in accordance with the Scriptures, and as set forth in these Constitution by By-Laws.

Section 7. Credentials Termination:

A. Dismissal: A minister who has been found guilty of violating any of the Assemblies of God principles set forth in Section 2 of this Article shall be subject to disciplinary action on the initiative of the District Credentials Committee. Said discipline shall be administered in brotherly love and kindness in an effort to lead the offending minister through a program of rehabilitation (See Section 9 of this Article). The Credentials Committee shall weigh decisions on the basis of the offense itself, the attitude of the offending minister toward the discipline, the manner and thoroughness of his repentance, the desire he manifests to cooperate, and the possibility of success in his rehabilitation.

In the event rehabilitation is not feasible or fails, the Credentials Committee may decide to terminate the minister's credentials.

Surrender of Fellowship Certificates: In all cases of discipline the minister shall be requested by the District Credentials Committee to surrender his credentials when the decision to terminate is final, or when a trial by jury has been requested. When an ordained minister is terminated, and that termination is final, his credentials are to be returned to the office of the District Secretary. Refusal to surrender his Certificate of Ordination and

current Fellowship Certificate shall be considered insubordination and result in placing further charges against the minister.

C. Publication: No publication of disciplinary action shall be made until the District Credentials Committee decision to discipline has become final, after all appeal rights have been exhausted. The name of a minister who has been terminated shall only then be published under the caption in the minister's letter known as "Assemblies of God Minister."

Immediately following the dismissal of a minister holding credentials with the Louisiana District Council, all ministers of the Louisiana District shall be notified by confidential letter of the action taken and be reminded of their ethical responsibilities outlines in the General Council Constitution and By-Laws (ARTICLE VIII, B, Section 10, page 126).

Section 8. Referral for Action to The Credentials Committee of The General Council of the Assemblies of God:

A. District Recommendation and Notification: If it is determined that a minister's credentials are to be terminated, the District shall recommend to the Credentials Committee of The General Council of the Assemblies of God that his name be removed from the official list of ministers, in accordance with Section 7 of this Article. Such recommendation shall set forth in writing satisfactory reason for the action. Copies of these charges and recommendations shall be forwarded to the said Credentials Committee, to the minister involved, and to the Superintendent of the minister's home District.

B. Thirty Days Allowed to Appeal for a Trial: Thirty days from the date of the notification of the District decision shall be allowed for the accused to appeal and request a trial. The right shall exist in the event the District Credentials Committee decides to impose any disciplinary measure against the minister. He shall be apprised officially of this right at the time the District decision is made. Request for a trial by jury shall comply with Section 11 of this Article.

C. Action of General Council Credentials Committee: The General Council Credentials Committee is authorized to comply with the request of the District, if in its judgment, the District was justified in the action taken. If the General Council Credentials Committee finds that justice has not been served, it may refer the case, together with its recommendations, back to the District Credentials Committee for review and reconsideration. In this event, the right to request a trial by jury will be preserved until after the reconsideration and review has been made and a decision reached by the District Credentials Committee. The 30 day right to request a trial by jury shall begin again at the time of notification of this further decision by the District Credentials Committee.

Section 9. Rehabilitation:

A. Responsibility of the District Credentials Committee to Determine Whether Dismissal or Rehabilitation is Appropriate Action: When it has been determined, either by a confession of the minister involved or by deliberation of the District Credentials Committee, that there is a cause for disciplinary action as a result of a violation of Assemblies of God principles as set forth in

Section 2 of this Article, it shall then be the responsibility of the District Credentials Committee to determine whether or not the offense warrants expulsion from the Fellowship by dismissal or restoration to good standing in the Fellowship through a program of rehabilitation.

B. Underlying Principle in Discipline: It is recognized that the underlying principle involved in discipline is redemptive, that man's conscience frequently brings him to judgment and confession, and that justice can sometime best be served with mercy.

C. Provisions for Rehabilitation: With the foregoing in mind, the following provisions for rehabilitation shall apply:

1. Basis: Those found to have violated any of the Assemblies of God principles stated in Section 2 of this Article shall be subject to a period of rehabilitation.

2. Period: The period of rehabilitation shall be not less than one year, except when the violation involves misconduct defined in Section 2.a., in which case it will be for not less than two years.

3. Procedure: The following procedure shall be used by the Board of Executives and Presbyters in determining the specific requirements of rehabilitation for the individual minister.

    a. Suspension of Credentials: The minister shall be considered to be under suspension during the entire period of rehabilitation.

    b. Retention of Membership in the District: The credentials of the minister undergoing rehabilitation shall be held in the District office during this period, and he must remain a member of the District during this time.

While his credentials are in a state of suspension, his name shall not be published as removed from the ministerial roster.

c. Extent of Ministry: The extent to which he may be permitted to minister, if any, shall be determined by the Board of Executives and Presbyters. Certain offenses may not require complete cessation of ministerial activities, although some restrictions or limitations may be warranted.

d. Supervision if Ministry is Terminated: In the event a minister's ministry has been terminated, he must become established in a local church working under the supervision of a pastor and presbyter.

e. Quarterly Reports: The minister must submit reports quarterly to the District Superintendent.

f. Rehabilitation Record: The rehabilitation record shall not accompany the Certificates of Transfer to another district. The information shall be preserved for future reference in the files of the District and the Credentials Committee of The General Council of the Assemblies of God.

g. Restoration of Credentials: When the rehabilitation period is satisfactorily completed, the minister shall be considered in good standing and his credentials restored.

h. Prerogative of District Presbytery to Administer Rehabilitation: The terms of rehabilitation as above stated shall be administered to the discretion of the District Presbytery.

i. Eligibility for Benefits Not Forfeited: During the period of rehabilitation the minister shall continue to be eligible for benefits such

as the Ministers Group Insurance and Ministers Benefit Association.

4. Reclassification from Dismissal to Rehabilitation: In the event a minister who has been dismissed shall later show repentance and indicates his desire for reinstatement, he shall, upon obtaining the approval of the District, enter the two-year rehabilitation program with the provision that he shall not be eligible for reinstatement until the requirements of the program have been satisfactorily completed.

Section 10. Restoration of Credentials:

A. Minimal Time-Lapse: Computed from the date of the action of the Board of Executives and Presbyters, as it appears on the termination report filed with the Credentials Committee of The General Council of the Assemblies of God, the time-lapse for the different categories shall be as follows:

1. Lapsed: No minimal time-lapse is required for those who have allowed their credentials to lapse due to failure to renew.

2. Resigned and Removed for Inactivity: In such cases a minister will not be eligible for reinstatement until at least six months shall have elapsed after his name has been stricken from our list of ministers.

3. Dismissed: For a minister who is listed as 'dismissed', the minimal time-lapse required before he is eligible to apply for reinstatement shall be one year, except that a minister who is dismissed because of charge of conduct unbecoming to a minister or indiscretions involving morals (Section 2.a.), the minimum time-lapse shall be two years

B. Right of Referral to the General Presbytery: The General Council Credentials Committee may hold the matter of a minister's reinstatement in abeyance until the next session of the General Presbytery in order that the General Presbytery may have the opportunity to review the case, in which event the matter of reinstatement of such minister may be left entirely with that body.

C. Authorization: Application for reinstatement may be made through the District within which territory the applicant resides. The application shall be considered subject to the approval of the District in which the termination was made.

D. Terminology:

1. Renewed: The term 'renewed' shall be used to apply strictly to those who for inadvertent reasons fail to comply with the annual questionnaire deadline, but do renew on or before April 30 and are restored to the ministerial list.

2. Reinstated: The term 'reinstatement' shall apply to those whose names have been deleted from the official ministerial list, but have received District clearance for restoration to the ministerial list.

APPENDIX XVI

MARVIN GORMAN and MARVIN GORMAN MINISTRIES, INC.	)	CIVIL DISTRICT COURT PARISH OF ORLEANS STATE OF LOUISIANA
VS. NO. 87-5289-K	)	
JIMMY SWAGGART, JIMMY SWAGGART MINISTRIES, INC., ET AL	)	_____ DEPUTY CLERK

FILED: _____

FIRST SUPPLEMENT AND AMENDING PETITION

NOW INTO COURT, through undersigned counsel comes MARVIN GORMAN and MARVIN GORMAN MINISTRIES, INC., plaintiffs in the above entitled and numbered cause, who now supplement and amend their original Petition in the following respects:

I.

Paragraph 11 of the original Petition is hereby deleted and substituted with the following paragraph to read in its entirety as follows:

11

On August 20, 1986, Jimmy Swaggart wrote the defendant, Cecil Janway and others, instructing Janway that if Louisiana District Council of the Assemblies of God did not handle Marvin Gorman in a manner acceptable to Jimmy Swaggart, then Swaggart would take mat-

ters into his own hands. (A copy of Swaggart's letter is attached hereto as Exhibit 2 and made a part hereof.) This letter depicts Jimmy Swaggart's intent, after several months of conspiring, plotting and coercing with the other defendants, to remove Marvin Gorman from the ministry and cause Marvin Gorman Ministries, Inc. to go bankrupt. Said August 20 letter also contained an enclosure wherein Jimmy Swaggart impuned the manner in which Marvin Gorman and Marvin Gorman Ministries, Inc. conducted its business."

VI.

Paragraph 20 of the original Petition is hereby deleted and substituted with the following paragraph to read in its entirety as follows . . .

20.

In June and early July of 1986, Marvin Gorman, in behalf of the First Assembly of God Church of New Orleans, Louisiana, Inc., and Marvin Gorman Ministries, Inc. had arranged for financing for the First Assembly of God Church of New Orleans, Inc.'s new auditorium which would seat more than 2,500 people and for Marvin Gorman Ministries, Inc's purchase of Channel 11 in Houma, Louisiana and Marvin Gorman Ministries, Inc.'s purchase of Channel 29 (KVHP) in Lake Charles, Louisiana. Said financing was approved by the Affiliated Managers' Bonding Company with interim financing from local financial institutions. Prior to said date, Marvin Gorman Ministries, Inc. had entered into buy/sell agreements to purchase said television stations. In September, 1986, the defendant, Allan McDonnel, as a board member

for the First Assembly of God Church of New Orleans, Louisiana, Inc. and in furtherance of the conspiracy did contact Affiliated Managers' Bonding Company and certain local financial institutions along with others and did maline the credit of Marvin Gorman and Marvin Gorman Ministries, Inc. and did slander Marvin Gorman's reputation, as well as imply dishonesty as to Marvin Gorman Ministrie's method of doing business resulting in Affiliated Managers' refusal to finance the purchase of the television stations, as well as Marvin Gorman Ministries, Inc., have suffered a great loss of reputation, respect and integrity, both privately and professionally, and have suffered great mental anguish and suffering.

The defendants did make such statements maliciously, falsely and with total reckless disregard for their truth which was further substantiated by their failure to back up said allegations with statements from the purported accusers. As a result of said defamation, intentional infliction of emotional distress and invasion of privacy, the plaintiffs, Marvin Gorman and Marvin Gorman Ministries, Inc., did suffer damages as follows . . .

X.

Paragraph 27 of Count V is hereby deleted and substituted with the following paragraph to read in its entirety as follows:

27

The defendants, in furtherance of the conspiracy acting through Allan McDonnel as a Board of Director for the First Assembly of God Church of New Orleans, Louisiana, Inc., did intentionally, maliciously and unjusti-

fiably make false statements about Marvin Gorman and Marvin Gorman Ministries, Inc.'s credit to Affiliated Managers, Mr. Jim Sackman, local financial institutions, and others better known to defendant over a period of months for the purposes of destroying not only Marvin Gorman but Marvin Gorman Ministries, Inc.

The defendant did make such statements maliciously, falsely and with total reckless disregard for their truth and as a result of said *defamation per se,* intentional infliction of emotional distress and invasion of privacy, the plaintiffs, Marvin Gorman and Marvin Gorman Ministries, Inc., did suffer damages as follows . . .

No. 88-1058

Supreme Court, U.S.
FILED
JAN 20 1989
JOSEPH F. SPANIOL, JR.
CLERK

In The

Supreme Court of the United States

October Term, 1988

WILLIAM D. TREEBY AND STATE FARM FIRE AND CASUALTY COMPANY,

Petitioners,

versus

DAVID V. ADLER, TRUSTEE IN BANKRUPTCY, IN THE MATTER OF MARVIN E. GORMAN AND VIRGINIA A. GORMAN, NO. 04024-K, AND IN THE MATTER OF MARVIN GORMAN MINISTRIES, INC., FORMERLY WHO CARES MINISTRIES, INC., NO. 04025-K,

Respondent.

On Petition for Writ of Certiorari to the Supreme Court for the State of Louisiana

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QUESTION PRESENTED FOR REVIEW

Whether the Louisiana Court of Appeals for the Fourth Circuit was correct in finding that the District Court of Orleans Parish had the right to exercise jurisdiction over this lawsuit.

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No. 88-1058

In The

Supreme Court of the United States

October Term, 1988

WILLIAM D. TREEBY AND STATE FARM FIRE AND CASUALTY COMPANY,

Petitioners,

versus

DAVID V. ADLER, TRUSTEE IN BANKRUPTCY, IN THE MATTER OF MARVIN E. GORMAN AND VIRGINIA A. GORMAN, NO. 04024-K, AND IN THE MATTER OF MARVIN GORMAN MINISTRIES, INC., FORMERLY WHO CARES MINISTRIES, INC., NO. 04025-K,

Respondent.

On Petition for Writ of Certiorari to the Supreme Court for the State of Louisiana

RESPONDENT'S BRIEF IN OPPOSITION

Respondent, David V. Adler, Trustee in Bankruptcy, in the Matter of Marvin E. Gorman and Virginia A.

Gorman, No. 04024-K, and in the Matter of Marvin Gorman Ministries, Inc., formerly Who Cares Ministries, Inc., No. 04025-K, respectfully submits this Brief in Opposition to the Petition for Writ of Certiorari filed herein by William D. Treeby and State Farm Fire and Casualty Company.

STATEMENT OF THE CASE

Plaintiffs, Marvin Gorman and Marvin Gorman Ministries, Inc., instituted this action on March 24, 1987, naming thirteen separate defendants alleging defamation, libel, invasion of privacy and intentional infliction of emotional distress. On May 22, 1987, the plaintiffs' filed a First Supplemental and Amending Petition alleging a conspiracy by the defendants to defame and ruin Marvin Gorman and Marvin Gorman Ministries, Inc. The plaintiffs later amended their Petition naming two additional parties who allegedly participated in the conspiracy and also added the insurance companies of various defendants as permitted by Louisiana law.

On June 8, 1987, the District Court of Orleans Parish dismissed the General Council of Assemblies of God, Michael Indest and Lakeview Christian Center from this suit for lack of subject matter jurisdiction. Shortly thereafter, the other defendants joined in the Exception for Lack of Subject Matter Jurisdiction and the trial court dismissed all of the remaining defendants for lack of subject matter jurisdiction on August 31, 1987. At the

time of the hearing on the Exceptions, the plaintiffs had not been permitted to take one deposition. Since the trial court did not provide written reasons, it is assumed the court's dismissal for lack of subject matter jurisdiction was couched on the defendants' attorneys' representations, a copy of the Assemblies of God By-Laws and Constitution, and the ordination papers of Reverend Marvin Gorman that had been submitted to the court at the hearing.

In March, 1988, David V. Adler, Trustee in Bankruptcy, in the Matter of Marvin E. Gorman and Virginia A. Gorman, No. 04024-K, and in the Matter of Marvin Gorman Ministries, Inc., formerly Who Cares Ministries, Inc., No. 04025-K, was substituted as the proper party plaintiff.

On April 22, 1988, the Louisiana Court of Appeals for the Fourth Circuit Reversed and Remanded the case for trial asserting that the trail court had jurisdiction to the hear the case.

On September 23, 1988, the Louisiana Supreme Court denied the Petitioners' writ application on the issue of subject matter jurisdiction.

Following the Louisiana Supreme Court's denial of their writ application, the Petitioners filed a Petition for Writ of Certiorari with this Honorable Court.

SUMMARY OF ARGUMENT

The Louisiana Supreme Court and the Louisiana Court of Appeals for the Fourth Circuit properly concluded that the District Court of Orleans Parish maintain subject matter jurisdiction over this lawsuit.

ARGUMENT

I. THE LOUISIANA COURT OF APPEALS FOR THE FOURTH CIRCUIT CORRECTLY CONCLUDED (AND THE LOUISIANA SUPREME COURT AGREED) THAT THE TRIAL COURT HAD A RIGHT TO EXERCISE JURISDICTION OVER THIS CASE AND THAT THERE WAS NO INFRINGEMENT UPON THE FIRST AMENDMENT OF THE UNITED STATES CONSTITUTION AND/OR ANY INTERFERENCE WITH PRECEDENCE OF THIS COURT OR ANY OTHER COURT FOR THAT MATTER.

A. The Louisiana Court of Appeals for the Fourth Circuit and the Louisiana Supreme Court correctly concluded that plaintiffs are not seeking civil review of an ecclesiastical matter.

Counsel for defendants have repeatedly argued before the trial court, Louisiana Court of Appeals for the Fourth Circuit, Louisiana Supreme Court and now before this Honorable Court that Gorman is disputing his dismissal as a minister and complaining of Assembly of God conduct exercised in accordance with the Assembly of God Constitution, By-Laws and teachings of scripture; obviously, to afford the defendants a separation of church and state argument. However, the Louisiana Court of

Appeals for the Fourth Circuit's decision concluded that Gorman was not disputing his dismissal. (Petitioners' App. 18, ¶ 1). Petitioners also contend that they acted in accordance with the Assemblies of God doctrine and discipline when disclosing Gorman's indiscretions (which Respondent contends are lies). The petitioners as part of their appendix attached the September 2, 1986 statement (Petitioners' App. 86), as well as the August 20, 1986 letter of Jimmy Swaggart (Petitioners' App. 84), but failed to attach the five-page statement authored by Jimmy Swaggart concerning Marvin Gorman (Respondent's App. 1).

Although a number of depositions are scheduled to be taken, the Plaintiffs/Respondents herein have had the opportunity to take two days of testimony from two defendants, Jimmy Swaggart and Cecil Janway. The testimonies reveal Jimmy Swaggart's conduct of August 20, 1986, in writing the letter and the statement, as well as Cecil Janway's conduct, in conjunction with other defendants, toward the September 2, 1986 statement did not further church discipline, church doctrine or individual beliefs, contrary to the representations to the courts below, as well as in the Petitioners' brief herein. (See Motion for Contempt and/or for Sanctions – Respondent's App. 6).

The First Amendment of the United States Constitution does not protect defamation nor does it deprive a Louisiana Court for exercising jurisdiction over defamation. The First Amendment of the United States Constitution and Article 1, Section 4 of the Louisiana Constitution both guarantee religious freedom and freedom from

interference by secular courts in the ecclesiastic matters of religious groups. *Serbian Eastern Orthodox Diocese for the U. S. and Canada v. Milojevich,* 426 U.S. 696, 96 S.Ct. 2372, 2389 (1976); *Wilkerson v. Battiste,* 393 So. 2d 195 (La. App. 1st Cir. 1980). However, malicious accusations allegedly voiced in an ecclesiastical setting, falsely indicting a man as a repeated adulterer, a demon, a father of illegitimate children, are not exercises of religious freedom protected by the First Amendment. Thus, the lower court's holding "that civil courts of Louisiana have subject matter jurisdiction over this suit" is a correct interpretation of the First Amendment of the United States Constitution and Article 1, Section 4 of the Louisiana Constitution requiring no review by this Court. For these reasons, the Petition for Writ of Certiorari should be denied.

B. The "Universal Church" argument is fictitious.

Although the Louisiana Court of Appeals for the Fourth Circuit, made an astute observation in its opinion on the defendants' argument of the universal church, (Petitioners' App. 19) the recent testimony of Jimmy Swaggart represents that no such belief exists. (See Motion for Contempt and/or Sanctions – Respondent's App. 6). For these reasons, the Petition for Writ of Certiorari should be denied.

C. The First Amendment of the United States Constitution or Article 1, Section 4 of the Louisiana Constitution do not protect lawless conduct even when the same is conducted in the name of religion.

Defamation in Louisiana is a quasi-offense governed by LSA-C.C. Article 2315 and where words *impute immorality* or other traits or acts calculated to arise hatred, ridicule, etc., the words are "defamatory per se." *Moreau v. Brenan,* 446 So. 2d 572 (La. App. 5th Cir. 1985). Where defamation is alleged, even in an ecclesiastical setting, the civil courts of this state may exercise subject matter jurisdiction. *Joiner v. Weeks,* 383 So. 2d 101, 102 (La. App. 3rd Cir. 1980). *See also Marianguinn v. The Church of Christ of Collinsville, Oklahoma, et al.,* No. 62,154 (Okl. Sup. Ct. January 17, 1989).

Although the Louisiana Court of Appeals for the Fourth Circuit did not address this question, it will be argued at trial that even if the defendants acted in furtherance of religious belief, (which is at all times denied) the same is not protected by the United States Constitution nor the Louisiana Constitution. For example, an individual cannot batter or kill another with immunity from prosecution, believing his/her actions to be a religious obligation. Neither can a man be acquitted of polygamy because he believed it to be a religious duty. *Reynolds v. United States,* 98 U.S. 244 (1879). *See also Gonzalez v. Roman Catholic Archbishop,* 280 U. S. 1, 50 S.Ct. 5, 74 L.Ed. 131 (1929).

Furthermore, the test becomes *New York Times v. Sullivan,* 376 U.S. 254 (1964), that is, one cannot knowingly spread lies about another nor can he make defamatory

statements that constitute defamation in total disregard for their truth. *See also Gaillot v. Sauvageau,* 151 So. 2d 515, 518 (La. App. 4th Cir. 1963). For these reasons, the Writ of Certiorari should be denied.

D. The Louisiana Supreme Court's decision and the Fourth Circuit Court of Appeals' decision does not conflict with any federal appellate court decision.

Petitioners' argument that the Louisiana Appellate Court's and Louisiana Supreme Court's decisions hereinbelow conflict with *Hutchison v. Thomas,* 789 F.2d 392 (6th Cir.) cert. denied, 479 U.S. 85 (1986), is in error. This Court need only look at Page 393 of the Sixth Circuit's decision to know such argument is without merit. There the court states:

> Appellate's basic claim is that the United Methodist Church wrongfully expelled him from his ministry in the defendant East Ohio Conference by fraudulent or collusive or arbitrary application of the rules, laws and doctrinal statements known as *The Discipline.*

It is undisputed that Marvin Gorman tendered his resignation on July 16, 1986 and that the church formally dismissed him shortly thereafter. (See Motion for Contempt and/or Sanctions – Respondent's App. 6). As the Louisiana Court of Appeals for the Fourth Circuit concluded and now has been confirmed by discovery, Marvin Gorman has never complained about his dismissal nor has he ever asked for reinstatement. The petitioners' *Hutchison* argument does not apply. For these reasons, the Petition for Writ of Certiorari should be denied.

E. The Petitioners are only concerned with information that will be disclosed about defendants as opposed to any third parties.

Ironically, the defendants, who spread untrue statements, rumors and gossip about Marvin Gorman and others, make the argument that the plaintiff-respondent's lawsuit may invade the privacy of others, when in fact they have used the names of others in vain. As this Court will note in the Motion for Contempt and/or for Sanctions filed by Defendants-Respondents herein on January 10, 1988, in the trial court, the defendants' brought the Motion for Protective Order under false pretenses. (Respondent's App. 6). Accordingly, this Court should deny the Writ of Certiorari.

II. THE UNITED STATES SUPREME COURT DOES NOT HAVE JURISDICTION TO CONSIDER WHETHER OR NOT MARVIN GORMAN MINISTRIES, INC. STATED A CAUSE OF ACTION UNDER LOUISIANA LAW.

Rule 17 of the United States Supreme Court entitled "Considerations Regarding Review on Certiorari" does not permit this Court to review the Louisiana Supreme Court's decision to deny writs from the Louisiana Court of Appeals Fourth Circuit decision finding that Marvin Gorman Ministries, Inc. has stated a cause of action for defamation under Louisiana law.

If Plaintiff-Respondent is incorrect in the above proposition, it is undisputed that Louisiana law provides a corporation a cause of action for defamation. *See Economy*

Carpets Manufacturing and Distributors, Inc. v. Better Business Bureau of Baton Rouge, 361 So. 2d 234 (La. App. 1st Cir. 1978); *WHC, Inc. v. Tri-State Road Boring, Inc.,* 468 So. 2d 764 (La. App. 1st Cir. 1985). In the instant case, the Louisiana Court of Appeals for the Fourth Circuit held that Marvin Gorman Ministries, Inc.'s reputation was inextricably tied to the personal reputation of Marvin Gorman (Petitioners' App. 33-A). Furthermore, that under the circumstances, it is possible for Marvin Gorman Ministries, Inc. to be defamed by statements about Marvin Gorman individually, even if Marvin Gorman Ministries, Inc. was not mentioned by name in those statements. *Id. See also* W. Prosser, Hornbook of the Law of Torts, Section 111, P. 745 (4th Ed. 1971), and Restatement of Torts 2d, SCC. 564, comment (e).

For these reasons, Petition for Writ of Certiorari should be denied.

CONCLUSION

The Louisiana Court of Appeals for the Fourth Circuit properly reversed and remanded this case for trial. The Louisiana Supreme Court properly denied the Writ for Certiorari. Although these courts did not have the benefit of any discovery which is now forthcoming, the same will demonstrate at trial that the Louisiana Court of Appeals for the Fourth Circuit and the Louisiana Supreme Court were correct in allowing the plaintiff-respondent his day in court.

Plaintiff-Respondent further requests this court enter sanctions under Rule 11 of the Federal Rules of Civil

Procedure against the defendants-petitioners herein for the reasons stated in the Motion for Contempt and/or for Sanctions presently pending the District Court of Orleans Parish, Louisiana. (Respondent's App. 6).

Respectfully submitted,

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STATEMENT FROM JIMMY SWAGGART CONCERNING MARVIN GORMAN

There will be no names given concerning guilty parties or innocent victims related to the incidents set forth in this statement. The names are fairly well known and can be supplied upon request. To save embarrassment, no names except those of witnesses will be used in this statement.

In 1981, Frances Swaggart began receiving telephone calls from a lady who attended Marvin Gorman's church. The lady involved has been and is a long time friend of ours. Her family is quite prominent in First Assembly.

Over a series of several weeks, this lady began to relate to Frances events leading into an immoral affair involving Marvin Gorman.

I personally questioned the lady very closely concerning these events and I feel that she was truthful in all accounts given.

This affair lasted approximately two years. Marvin Gorman would purchase gifts and give them to her. They would park on side roads or in remote places for long periods of conversation. All of this was done with no chaperon nor anyone else being present.

The affair gradually evolved into "petting" and "kissing" and finally concluded in a motel room in approximately 1981.

"Petting" and "kissing" were involved in the motel experience. In the conversation that was included in the incident, the lady said the Marvin Gorman applied heavy pressure on her involving a sexual affair. His statement

was, "I can cover it and no one will ever know." She states that she jumped up and ran out of the room. The following should be added to this scenario.

For several months before this situation was stopped, her husband (a former deacon at First Assembly), suspecting something was going on, had the telephone tapped. He recorded many hours of conversation between his wife and Marvin Gorman over a period of several months. He is satisfied that his wife is telling the truth.

There seemed to be no adultery involved, even though Marvin Gorman pressured her greatly to engage in same but, as stated, she ran out of the room.

A short time after her relating this incident to me by telephone, I saw Marvin in an airport terminal. I asked him to come and see me in Baton Rouge when he had some time. A few weeks later, he came to my office in Baton Rouge.

In the privacy of my office with only the two of us present, I confronted him with the information I have just stated.

He broke down, started to weep and admitted it had happened with one exception. He denied any effort to try to get her in bed. Of course, it must be understood that, according to her testimony, they were sitting on the bed at the time.

She vows vehemently that a strong effort was made by him to get her in bed for a sexual affair.

As we discussed this in my office, I told him it would be hard to believe that any man would take a woman to a

motel room, engage in "petting" and "kissing" and give no thought to going to bed with her.

I asked him if there had been other situations involving other women and he vowed that this was the only one. However, it must be understood that at this same time, he was, even then, having an affair with the second woman (an Assemblies of God pastor's wife). So, in effect, he lied to me.

I told him that I would not say anything to Brother Janway or Brother Zimmerman (then the General Superintendent) if I was assured that the matter would stop immediately. I felt I had a way to monitor the situation through the woman in question. He assured me the matter would end then and there and I feel it did end. However, it must be added once again, the affair with the other woman was even then going on and continued for nearly a year after this particular confrontation. (This was learned after the fact.)

While at General Council in San Antonio, Bob Schmidgall, who was to become an Executive Presbyter at this particular Council called me.

He stated that Marvin Gorman had received a strong vote for the position of General Superintendent. The possibility definitely existed that Marvin would be elected Assistant General Superintendent. Brother Schmidgall said this.

"I have heard that you have some information respecting an immoral situation concerning Marvin Gorman. If you do, I need to know about it."

I hesitated and then went ahead and told him what I have related above. I never saw Brother Schmidgall after that and do not know what transpired. However, I do know that Marvin Gorman removed his name relative to this particular position but was re-elected as Executive Presbyter of the Assemblies of God.

On Thursday, July 10, 1986, Bill Treeby, a Board member of Jimmy Swaggart Ministries and a member of Lakeview Assembly of God church in New Orleans came to my office on business concerning J.S.M.

In my office, he said to me, "There has been a problem in New Orleans. An Assemblies of God pastor's wife has committed adultery with an Assemblies of God pastor." Oddly enough, I did not ask him who it was and he did not, at that time, tell me.

The following Sunday morning I preached at Family Worship Center. Immediately after the service, we left to go to San Jose, Costa Rica to dedicate a church. Bill Treeby and his wife, Nancy, accompanied us. Bill had been involved in the Costa Rican work and wanted to see the church.

On the plane, he told us the names of the pastor's wife and the corresponding party. That party was Marvin Gorman, he said.

When we arrived in San Jose, Bill called his pastor, Mike Indest of Lakeview Assembly in New Orleans. I understand the following is what transpired respecting Mike Indest and Bill Treeby.

The woman in question (the second woman) came to Mike's home for counseling. These people had been long

time friends. I understand Mike's wife and children were present. At any rate, the woman confessed to Mike several immoral affairs, one of them involving Marvin Gorman.

I talked to Mike briefly on the phone from San Jose. The conversation basically included the events up to that particular time.

We returned to Baton Rouge from San Jose on Monday morning. I am told that some time on Tuesday afternoon, the pastor whose wife had committed the offense confronted Marvin Gorman in Marvin's office. After being informed that Mike Indest was a party to this knowledge, Marvin called Mike Indest. He asked if Mike would come to his office. I understand that Mike requested that Marvin come to his office instead. This was done.

About 5:30 PM that Tuesday afternoon (July 15, 1986), I was still at my office when Mike called to tell me that Marvin Gorman was in his, Mike's office. Marvin was accompanied by David Savage. Mike said to me, "He has confessed to everything." Mike said he wanted to come to my office. He said he did not feel qualified to deal with this situation any longer and it needed to be placed in someone else's hands.

I understand the reason he did not contact Brother Janway was because Brother Gorman asked him not to. At any rate, Mike requested that they come to Baton Rouge.

I acquiesced to this but requested that Bill Treeby be included because Mike, realizing the enormity of the

situation, had confided in Bill from the very beginning. (Bill Treeby is an Attorney-at-Law with the prestigious legal firm of Stone, Pigman in New Orleans.)

They consented to this and arrived at my home in Baton Rouge around 8 PM. Those at this meeting were myself, Jim Reutz, Bill Treeby, Mike Indest, Marvin Gorman and David Savage. Mike Indest briefly related to me what had taken place.

I then turned to Marvin Gorman (we were in my study) and asked him if this was so. He said, "Yes."

He basically related the same thing Mike Indest had. The situation had continued for nearly four years. The names of motels were provided by the woman in question to Mike Indest and even some dates. Marvin admitted, in front of all those present, that this was true.

I then asked Marvin if there had been any other women involved. He assured me no other women were involved. I said to him, "Marvin, I believe there have been women involved all the time since you were D-CAP up until this present hour. Why don't you, at this moment, come clean about everything and make a total confession?"

He vehemently vowed that there were no others involved. Then I said this to him.

"These are the same, identical words you told me when I talked to you about the first woman in 1981. You vowed then that there were no other women involved and at that very time you were involved with this particular woman. You lied to me then and I believe you are lying to me now."

He was forced to admit that he had lied back in 1981, but he again remonstrated that no other women were involved.

I asked him what he was going to do. The room became very heavy with silence. No one said anything. Marvin never answered.

I walked to my desk, picked up the Bible and turned to I Timothy 5:20. I told him to read it. He did so out loud. This particular passage relates to an elder who has sinned.

He, still, said nothing.

I, then rephrased my question and asked, "What should you do?"

Once again the room became very heavy with silence and he still did not answer.

After a considerable period of time, I stated to him, "You are going to have to call Brother Carlson and Brother Janway."

He then pleaded to be given a period of time to get the finances of the church in order. He said, "Men will be in the church offices tomorrow relative to making a loan to the church of some $16 million. I must be allowed to get this loan in order."

I told him it would not be right for these men (whomever they were) to make a loan to a church without information of this magnitude being given to the lending agency. To carry forth with this would be tantamount to fraud.

Everyone in the room agreed with that. I further stated to him, "You must tell the lending agency about this change in the church. If they still want to loan the money, that is their business, but they must know about this."

No more was said concerning the loan. Marvin then said to me, "I will call Brother Carlson and Brother Janway, but first of all, I want to tell my family."

We were concerned for him; consequently, I had Jim Rentz drive his car back to New Orleans while Bill Treeby and Mike Indest went back in their car. I took Marvin and David Savage in my car.

On the way to New Orleans, Marvin asked about a woman who had worked for him and then had worked for us for a short time. He wanted to know if she had told me that they (she and Marvin Gorman) had had an affair. I told him she had not told me this. It is my personal belief that this was another case involving an immoral affair; however, I say this without proof.

We had had prayer together in my study and when we all arrived at David Savage's church in New Orleans, we had prayer together again and Marvin Gorman left.

This is the sum total, as best I can remember, of my involvement concerning the affairs in question respecting Marvin Gorman.

/s/ Jimmy Swaggart

CIVIL DISTRICT COURT FOR
THE PARISH OF ORLEANS

STATE OF LOUISIANA

NO. 87-5289 DIVISION "K" DOCKET NO.

DAVID V. ADLER, TRUSTEE IN BANKRUPTCY, *IN THE MATTER OF MARVIN E. GORMAN AND VIRGINIA A. GORMAN, CASE NO. 04024-K* AND *IN THE MATTER OF MARVIN GORMAN MINISTRIES, INC., FORMERLY WHO CARES MINISTRIES, INC., CASE NO. 04025-K*

VERSUS

JIMMY SWAGGART AND
JIMMY SWAGGART MINISTRIES, INC., ET AL

FILED:_____ _____
DEPUTY CLERK

MOTION FOR CONTEMPT AND/OR FOR SANCTIONS

NOW INTO COURT, through undersigned counsel, comes plaintiff herein, DAVID V. ADLER, TRUSTEE IN BANKRUPTCY, *IN THE MATTER OF MARVIN E. GORMAN AND VIRGINIA A. GORMAN, CASE NO. 04024-K* AND *IN THE MATTER OF MARVIN GORMAN MINISTRIES, INC., FORMERLY WHO CARES MINISTRIES, INC., CASE NO. 04025-K,* pursuant to Article 224 of the Louisiana Code of Civil Procedure, 863 of the Louisiana Code of Civil Procedure (its predecesor and as amended effective January 1, 1989), and pursuant to 3.1, 3.2, 3.3, and 3.4 of the Supreme Court of Louisiana Rules of Professional Conduct as effective January 1, 1987, and moves this court to find the defendants in this case and their attorney in contempt and order sanctions including, but not limited to, a fine, attorney's fees and costs of plaintiff's counsel.

The following will demonstrate during the past two years, the modus operandi of defendants and their counsel herein has been to harass plaintiff, increase costs of litigation, cause unnecessary delay, hoping to eventually deprive plaintiff, and the real parties in interest, Marvin Gorman and Marvin Gorman Ministries, Inc., their day in court. The motion is directed to all defendants but is focused primarily on the defendants, Jimmy Swaggart, Jimmy Swaggart Ministries, Inc., Frances Swaggart, William Treeby, Michael Indest, Lakeview Christian Center and their attorneys.

FACTS

Marvin Gorman and Marvin Gorman Ministries, Inc. filed suit in March, 1987, naming a number of defendants. The Petition was later amended to allege a conspiracy among the defendants to ruin Marvin Gorman and Marvin Gorman Ministries, Inc.

On April 27, 1987, the defendants, Jimmy Swaggart, Jimmy Swaggart Ministries, Inc., William Treeby, and Don Brankel, through their attorneys of record, filed Exceptions of Improper Cumulation of Action, Misjoinder of Parties, No Right of Action and No Cause of Action. On April 28, 1987, the defendants, Michael Indest and Lakeview Christian Center, through their attorneys, filed Exceptions of Lack of Subject Matter Jurisdiction and Improper Venue, Improper Cumulation of Action, Improper Joinder of Parties, Prematurity and an Exception of No Cause of Action. Although the Stone, Pigman firm was co-counsel for Michael Indest, Lakeview Christian Center and William Treeby, Stone Pigman did not

raise subject matter jurisdiction at this time for Jimmy Swaggart and Jimmy Swaggart Ministries, Inc., William Treeby and Don Brankel.

All remaining defendants subsequently filed their Exceptions asserting in essence the same grounds raised by other defendants.

On May 1, 1987, apparently after a meeting among all counsel for all defendants, Phillip Wittmann of the Stone, Pigman firm mailed a letter to all counsel of record (a copy of May 1, 1987 letter attached as Exhibit No.1). Said letter indicates the positions of the various parties with their insureds and a suggestion to eliminate duplication of efforts since eighty (80%) of the work performed by the Stone, Pigman firm was inuring to the benefit of all the defendants, while only twenty (20%) percent of their effort was directed toward individual defenses. In Paragraph 1 of Page 2 of said letter, counsel for the defendants felt, "beyond our wildest dreams" that the Exceptions that had been filed or would be filed could be sustained.

Shortly thereafter, plaintiffs filed a motion to take video depositions of Jimmy Swaggart and other defendants. An opposition was filed on May 14, 1987. After weeks of arguing, an agreed order was entered on the video depositions stating that the party taking the deposition would pay for the videotapes and also pay for a stenographer present and that the court reporter would be responsible for filing the videotapes with the Clerk of Court within 24 hours of completion of the deposition. The Order did not address audiotapes and the defendants

wrongfully detained the court reporter's audiotapes following Jimmy Swaggart's deposition.[1]

The defendants also acted in bad faith with regard to the Protective Order sought from and entered by this court on June 8, 1987. The defendants indicated that numerous women would be implicated as having adulterous affairs with plaintiff and desired that these women be protected from public exposure of their acts. Plaintiff had admitted to adultery with a single woman. Defendants had indicated in the slanderous and malicious remarks which gave rise to this action that they had signed statements from numerous women who claimed he committed adultery with them. It was for the protection of these women that the Protective Order was entered.

Plaintiff, in preparing his case for trial, naturally has sought through discovery to learn from defendants the identities of this large number of women. The defendants have, however, produced no statements nor identified in the depositions which have been taken a single woman who made a statement claiming that plaintiff committed adultery with her (with the exception of the one to which plaintiff has admitted). The defendants have by such methods obtained a Protective Order upon false representations as to the existence of testimony which has not been full in coming and which has never existed.

In discovery the intent of defendants has become apparent. After spending months defaming plaintiff and accusing him of numerous adulterous relationships to the public, they have sought a Protective Order to keep secret the fact that there was only the one such relationship

which plaintiff had admitted to, thus keeping plaintiff from clearing his name.

On or around May 11, 1987, plaintiffs sent their first Request for Production of Documents and First Set of Interrogatories to all defendants.

On May 15, 1987, at the hearing regularly scheduled by this court on all the Exceptions of the parties, Mr. Peter Feringa showed up at the courtroom with Mr. William Treeby and hand delivered his Supplemental Memorandum on the exceptions of Lack of Subject Matter Jurisdiction, along with a copy of the By-Laws and Constitution of the Assemblies of God and initiated the argument that the information disclosed by the assemblies of God about Marvin Gorman (whether it was true or not), and other ordained ministers including, but not limited to, Michael Indest, William Treeby, Lakeview Christian Center and others was in furtherance of Assemblies of God interpretation of biblical doctrine, particularly Matthew 18, Versuses 15 - 17. Mr. Feringa offered into evidence the By-Laws and Constitution of the Assemblies of God, as well as the annual ordination papers of Reverend Marvin Gorman that Gorman had signed as an Assemblies of God pastor agreeing to abide by the by-laws and constitution of Assemblies of God. However, Mr. Feringa was unable to point to any provision in the By-Laws and Constitution that says that the Assemblies of God believe what he was verbally representing their belief to be, particularly Matthew 18, Versuses 15 - 17. Furthermore, Mr. Feringa argued that an Assembly of God pastor who has moral charges brought against him cannot resign.

On June 8, 1987, this court entered a Judgment denying many of the defendants' Exceptions, but granting the Exception for Lack of Subject Matter Jurisdiction filed by Mr. Peter Feringa in behalf of his clients, Michael Indest and Lakeview Christian Center.

On or around June 10, 1987, the remaining defendants joined in the Exceptions for Lack of Subject Matter Jurisdiction. The court can note on Page 4 of the reply memorandum filed by Stone, Pigman on behalf of Jimmy Swaggart, Jimmy Swaggart, Ministries, Inc., William Treeby and Don Brankel that Matthew 18, Versuses 15 - 17 was represented as authority justifying the actions of the defendants against Marvin Gorman and Marvin Gorman Ministries, Inc.

The movers contend that the defendants and their counsel knew at the time in which these Exceptions were filed that neither the reading nor mailing of their statements were sanctioned by the Assemblies of God and that the argument they were making was proposterous.[2]

On or around August 31, 1987, the court sustained all of the Exceptions for Lack for Subject Matter Jurisdiction filed by the defendants and declared all other Exceptions moot. It was obvious that the court believed the representations of counsel were in good faith, that the wrongful conduct of the defendants towards Marvin Gorman was in furtherance of church doctrine and church beliefs. As indicated hereinabove, the evidence indicates to the exact contrary. The defendants were successful in preventing any discovery depositions taken prior to the court's ruling on the Exceptions.

On or around June 10, 1987, the defendants, Jimmy Swaggart, Jimmy Swaggart Ministries, Inc., William Treeby and Don Brankel, filed a response to the plaintiff's First Set of Interrogatories and on or around June 15, 1987, filed a response to plaintiff's first Request for Production of Documents. Although the defendants have failed to comply with the discovery requests of the plaintiff in a number of instances, those arguments will be reserved later for a Motion to Compel. However, one particular instance that must be addressed in light of the recent ex parte motions requiring plaintiff to post a cost bond is plaintiff's interrogatories propounded to the defendants back in 1987.

Plaintiff's interrogatories asked that the respondents provide names, addresses and telephone numbers of each every individual whom defendants know to have any knowledge of facts or circumstances pertinent to this litigation. This question was also followed by an identical question except limited to witnesses intended to be called at the trial of this case. *In both responses, the defendants, Jimmy Swaggart, Jimmy Swaggart Ministries, Inc., William Treeby and Don Brankel, through their counsel, objected stating that the request was overbroad and then instructed plaintiff to obtain this information through depositions if the plaintiff so desires. As is obvious, the defendants were attempting to escalate expenses, not comply with discovery, contrary to what they represented to the court Thursday morning, January 5, 1989.*

The plaintiff appealed this August 31, 1987 dismissal of the entire case and filed briefs with the Louisiana Court of Appeals for the Fourth Circuit. The defendants responded to plaintiff's appeal and once again argued

what had been argued before the trial court that the defendants' conducts was in furtherance of the Assemblies of God By-Laws and Constitution in interpreting scripture, particularly Matthew 18, 15 - 17. In keeping with the pattern of harassment, Mr. Peter Feringa, counsel for Michael Indest, Lakeview Christian Center and apparently undisclosed counsel for William Treeby filed an Exception of No Right of Action in the Fourth Circuit and hand delivered the undersigned counsel a copy with the memorandum brief 15 minutes prior to oral arguments on March 3, 1987. Counsel's argument was that between the time of dismissal and the time of oral argument, Marvin Gorman and Marvin Gorman Ministries, Inc. had taken bankruptcy and the trustee had not been substituted as the proper party plaintiff. However, the trustee, Mr. David Adler, was present in court having already given instructions to the undersigned to act in his behalf. The Fourth Circuit heard the arguments, the trustee was substituted and Mr. Feringa's Exception was overruled. The Fourth Circuit, on April 22, 1988, reversed and remanded the case to trial. The defendants took writs to the Louisiana Supreme Court and made the same arguments expressed hereinabove. Writs were denied. The defendants, Jimmy Swaggart and Jimmy Swaggart Ministries, Inc., and the defendant, William Treeby, have now filed a Petition for Writ of Certiorari before the United States Supreme Court, making the same argument as made before the trial court, the Fourth Circuit and the Louisiana Supreme Court. (Although the District Court's Protective Order does not have jurisdiction over the United States Supreme Court, in fairness to counsel opposite, the undersigned is putting all defense counsel

on Notice that the transcript of Jimmy Swaggart's deposition and Cecil Janway's deposition will be filed with the United States Supreme Court in conjunction with the Memorandum in Opposition to the Petition for Certiorari and the Motion for Sanctions pursuant to Rule 11 of the Federal Rules of Civil Procedure.)

During the deposition of Jimmy Swaggart, Denise Pilie' provided co-counsel for the plaintiff approximately six or eight documents which were requested in plaintiff's document request which were handed to plaintiff (Reverend Gorman) while the undersigned continued to question Mr. Swaggart. Shortly thereafter, Mr. Wittmann said there was a mistake in the production of these documents in that they had not been stamped "confidential" as required by the court order and asked that they be returned temporarily for stamping during the next break. In the meantime, plaintiff and his attorneys perused the documents and made editorial markings thereon.

During the following break, Mr. Wittmann again asked for the documents so that they could be stamped "confidential." The undersigned delivered the documents to Mr. Wittmann for such purpose who then handed them to Ms. Pilie. Thereupon, Ms. Pilie announced that the documents should never have been produced and then refused to return them, indicating that there was never any intent to get the documents merely to stamp them "confidential." After some discussion and the persistent refusal of Ms. Pilie to return the documents, it was pointed out that certain editorial marks has been made on them and if said papers were not to be returned, they should be destroyed. At this time, Ms. Pilie destroyed the documents.

Later in the deposition, Mr. Wittmann and Ms. Pilie acknowledged that certain of the documents should be produced and produced new copies of them. They refused, however, to produce copies of the remainder of the documents which they had taken back under false pretenses.

On December 20, 1988, during Jimmy Swaggart's deposition, Swaggart's counsel apparently reviewed documents from Cecil Janway's counsel and provided the same to plaintiff's counsel during deposition. The undersigned immediately questioned why these documents, as well as any other documents which would have been responsive to the subpoena duces tecum were not produced in Cecil Janway's deposition on December 15. Counsel for Cecil Janway responded by saying there had not been a call for a production, which was patently false, but obviously of a deliberate intent by the defendants to deprive plaintiff of his discovery, and to delay the litigation and increase the costs of plaintiff's litigation.

On the afternoon of January 4, after counsel for plaintiff, Hunter Lundy, had driven to New Orleans and counsel for plaintiff, Tomy Frasier, had left Tulsa to fly to New Orleans, Hunter Lundy received a call from his office with instructions to call Ross Buckley. On the afternoon of the 4th in New Orleans, Mr. Lundy called Mr. Buckley and was told that Mr. Buckley was filing a Motion for Protective Order as to documents requested and was also told by Mr. Buckley that Peter Feringa had filed a Ex Parte Motion for Cost Bond. Once again, this was just consistent with Mr. Feringa's pattern of not affording the plaintiff's counsel the courtesy of a telephone call, a letter or any indication of his intentions.

CONCLUSION

For each and all the foregoing reasons stated above, plaintiff requests that an order of contempt be issued against the defendants and their counsel and sanctions against the defendants in the amount of FIFTY THOUSAND AND NO/100 ($50,000.00) DOLLARS for the unnecessary time and expenses incurred by plaintiff's counsel in preparing briefs and arguments based upon the Exceptions for Lack of Subject Matter Jurisdiction, Motions for Protective Order, and remaining Exceptions which the defendants' counsel knew themselves to be untrue and without merit. Furthermore, said request of $50,000.00 is for reimbursement of unnecessary expenses and time spent by plaintiff's counsel in travel, delay, and duplication of efforts due to defendants' and their attorneys' conduct, harassment and actions taken for purposes of delay.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing has been forwarded to all counsel of record by depositing a copy of the same in the United States mail, postage prepaid and properly addressed.

Lake Charles, Louisiana, this 9 day of January, 1989.

/s/ Hunter W. Lundy
HUNTER W. LUNDY

PLEASE SERVE:

All defendants through
their attorneys of record

FOOTNOTES

[1] On the completion of the first day of Jimmy Swaggart's testimony, December 20, 1988, the court reporter handed the videotapes and audiotapes to Ms. Denise Pilie' for purposes of safekeeping overnight in the Stone, Pigman safe. Upon commencement of the deposition on December 21, 1988, Ms. Pilie' and Mr. Wittmann advised all parties in the room that audiotapes should not be used over the objection of the court reporter and plaintiff's counsel.

It is represented that there was in excess of 20 lawyers in the room, many of which were talking and objecting at the same time. In many instances, Mr. Swaggart would respond to questions before they were completed and would be talking at the same time as the questioner, his lawyer and others. The court reporter represented that the audiotapes were necessary to confirm an accurate transcript. Contrary to the undersigned's and court reporter's request, Denise Pilie' kept the audiotapes and refused to turn them to the court reporter and instead went and filed them with the clerk. The court reporter's letter objecting to Stone, Pigman's conduct was mailed to Stone, Pigman on December 26, 1988, (copy of which is attached as Exhibit No. 2).

[2] In the deposition of Jimmy Swaggart, taken on December 20 and 21, 1988, the undersigned asked Mr. Swaggart if he authored and mailed the August 20, 1986 statement to which he replied "yes". The undersigned further asked if Mr. Swaggart authored the five-page statement about Marvin Gorman and attached it to his August 20 letter when he mailed it out. The witness replied "yes". When Mr. Swaggart was asked if he had ever made a statement that the reason for disclosing Marvin Gorman's sin was on the basis of scripture taken out of Matthew to disclose the sin to the universal church, his reply was "I have never heard of such a statement." Swaggart went on to say that he did not recall ever having made a statement such as that and that he did not recall anyone ever having made such a statement in his behalf. The undersigned questioned him further and said, "Do you believe it is the proper thing to do to expose your bretheren?" He said "no". Jimmy Swaggart went on to say that his belief was out of Genesis 9,

that it was better to cover the sin of brother than to destroy the work of God. Amusingly, Swaggart said that his August 20, 1986 letter was fulfilling Genesis Chapter 9.

When Mr. Swaggart was asked if he had personally ever disciplined a minister, he said that he had never disciplined a minister. In asking Mr. Swaggart why he wrote the August 20, 1986 letter, his reply was that he saw Jim Bakker and Mama Goodman on the PTL Club talking about the church in New Orleans and how this evangelist, who they did not identify by name, was railroading Marvin Gorman. Apparently, Swaggart's August 20 letter and statement about Marvin Gorman was something Swaggart wrote in defense of something being said on the PTL network; that it was not church discipline and certainly was not in furtherance of scripture out of Matthew.

The deposition of Jimmy Swaggart was noticed for December 20, 1988, in the offices of Stone, Pigman and without a courtesy call from any defense lawyer, the plaintiff's lawyers learned after proceeding to the deposition that Stone, Pigman and Chaffe, McCall had changed the deposition location to the Chaffe, McCall office in the Energy Centre.

On December 15 and 16 of 1988, the undersigned took the deposition of Mr. Cecil Janway, the District Superintendent to the Louisiana District Council of Assemblies of God. The undersigned asked Mr. Janway if a minister is going to be disciplined, does a complaint have to be made against him and Mr. Janway responded, "Right, in writing." In further question, Mr. Janway was asked if he was present in Reverend Gorman's home on July 16, 1986. Janway's response was "correct". The undersigned then asked if that was when Reverend Gorman handed him his fellowship card. The response was "correct". He was asked if that is the night that Reverend Gorman resigned from the church. Mr. Janway's reply was "correct". The undersigned then asked for Mr. Janway to confirm that there had not been a complaint in writing made against Reverend Gorman. His response was correct. He was then asked if Reverend Gorman tendered his resignation on the night of July 16, 1986, and Mr. Janway response was "as a pastor, correct" and that he tendered his fellowship card as a member of the Louisiana District Council and General Council of Assemblies

of God. His response was "correct". Later in the deposition, Mr. Janway tried to turn it a round and say that Reverend Gorman could not resign from the church nor from the Assemblies of God because he made a confession and that he was not sure what he was resigning from and then the undersigned came back and asked if Marvin Gorman did not have a fellowship card with the Assemblies of God, with the General Council and Louisiana District Council, then he could not pastor an Assemblies of God Church, could he? Janway replied, "Well, basically no."

When Janway was asked if he was consulted in any matter with respect to the statement that was read to the First Assembly of God Church on July 20, 1986, Mr. Janway's response was "I don't know." (The July 20 statement will be filed in support of this motion within seven (7) days herein in accordance with the Protective Order since the same was produced for the first time pursuant to discovery.)

In Cecil Janway's deposition, he testified that the First Assembly of God Church in New Orleans invited him and Forrest Hall to attend a church business meeting on September 2, 1986, and to read the statement to the church. Although he refused to agree to it, he did confirm the validity of minutes of a meeting of August 30, 1986 where he, Forrest Hall and Carl Miller, of the First Assembly of God, agreed that they would take their notes and that Carl Miller and Allen McDonnel would take them to Bill Treeby to edit so that it would be most effective for its presentation on the night of September 2, 1986. Cecil Janway testified that his September 2, 1986 statement was drafted after having reviewed the July 20, 1986 statement, the August 20 letter of Jimmy Swaggart with the attached statement about Marvin Gorman, as well as a volume of other correspondence from Michael Indest, etc. Janway also admitted that the September 2 statement contained language extracted verbatum from some of this correspondence. In Cecil Janway's deposition, he indicated the reason they mailed out the September 2, 1986 statement around the country was because people were calling and asking about Reverend Gorman and what was going on in the Assembly of God in New Orleans so therefore, he mailed the September 2, 1986 statement. Nowhere in his deposition did Cecil Janway state that he

mailed it out because he was following the By-Laws and Constitution of the Assemblies of God or because he was following the Assemblies of God's scriptural interpretation of Matthew 18, Versuses 15 - 17. (The undersigned counsel is putting all counsel on notice that the portion of the transcript of the deposition of Jimmy Swaggart which is available will be filed in the record along with Cecil Janway's deposition within seven (7) days in accordance with this Court's Protective Order.)

EXHIBIT NO. 1

STONE, PIGMAN, WALTHER,
WITTMANN & HUTCHINSON
COUNSELLORS AT LAW

546 CARONDELET STREET

NEW ORLEANS, LOUISIANA 70130-3588

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May 1, 1987

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JOSEPH L. CAVERLY
UISDEAN R. VASS

*A Professional Corporation

OUR FILE NUMBER
34,615

To: All Counsel of Record
Re: Marvin Gorman and Marvin Gorman Ministries, Inc. v. Jimmy Swaggart, et al.

Dear Ladies and Gentlemen:

We had agreed to make a recommendation to our defense group regarding the allocation of costs and expenses, including legal fees, incurred in this case. As you know, we have seven separate insurers, insuring fifteen separate defendants, with some insurers having as many as eight separate insureds. At present we are appearing as co-counsel with Martin Hunley for the Reverend Jimmy Swaggart, Jimmy Swaggart Ministries, Don Brankel and Bill Treeby. We are also acting as co-counsel with Pete Feringa's firm for Lakeview Christian Center, Bill Treeby, and Mike Indest.

USF&G has the largest number of individual insureds and at the moment has three separate law firms defending this case. Jim Murphy is representing the Louisiana District Council of the Assemblies of God, Inc. and Cecil Janway. Wood Brown is representing The First Assembly of God. Waldo Risner and Allan McDonnel, and Pete Feringa is representing Lakeview Christian Center, Mike Indest and Bill Treeby.

Preferred Risk, represented Larry Mann, insures Canal Street Assembly of God and Tom Miller; Jerry Weigel is representing the General Counsel of Assembly of God and the Reverend Carlson through his client, Liberty Mutual. We are all trying to avoid getting in each other's way, and, as I mentioned at our earlier meetings, we have no interest in interfering with anyone's attorney/client relationship with any insurance carrier. However, we have been requested to represent a number of

the individual defendants and are doing so now in the instances enumerated above. Unavoidably a great deal of our work is inuring to the benefit of all and we think it is appropriate to provide for an allocation of joint defense costs among the various insurers in this case. We have a number of depositions already scheduled and more will undoubtedly be forthcoming (unless our exceptions are successful beyond our wildest dreams) and the discovery requests made so far by the plaintiff's attorneys indicate that they are prepared to do a little work as well.

While it is difficult to come up with a precise formula for sharing of costs and fees, I do believe that it will be in the best interests of all of the defendants to allow our firm to assume the laboring oar and for each of the insurers to pick up a portion of the expenses that would otherwise be borne solely by Bill Treeby's insurers. In this way, individual counsel for the insurers could supervise and review what is being done in the joint defense, while reserving any individual defenses they may wish to pursue at their own expense. With the number of insurers involved, the allocation of joint defense costs will not be that burdensome as to any one company.

It seems to me that probably 80% of the work that we are doing will inure to the benefit of all defendants, while only 20% of our effort be directed toward individual defenses. What I suggest is that the 80% be divided seven ways among USF&G, St. Paul, ALAS, Liberty Mutual, Preferred Risk, State Farm, and Aetna. This will mean that each insurer will pay about 11½% of the joint defense fees.

The only other way to proceed it seems to me would be to divide the cases among the various attorneys individually so that one firm will handle certain depositions, while another firm handled other depositions, interrogatories, etc. However, the case really isn't big enough to warrant that approach and I think that approach will be more costly and less effective than an agreement along the lines that I am suggesting.

If anyone is uncomfortable with our firm assuming the lead role, we would be perfectly happy to have one of the other lawyers in our group assume the role as lead counsel, with us assuming a secondary role on behalf of our individual clients, provided the clients don't object. In those cases in which insurers have reserved their rights, the clients have expressed a desire to have this firm represent them. The point is, that all of us cannot defend this case all of the time without having the defense costs exceed any verdict that could reasonably be anticipated.

Please give this matter your prompt attention and be prepared to discuss it at our next meeting.

With kindest regards, I remain

Sincerely,

/s/ Phil Wittmann
Of STONE, PIGMAN, WALTHER,
WITTMANN & HUTCHINSON

PAW/ker

SOUTHWEST REPORTERS
P O BOX 3226
420 PUJO STREET (70601) EXHIBIT NO. 2
LAKE CHARLES, LA 70602-3226
318/433 5672

DECEMBER 26, 1988

DENISE PILIE' &/or PHILLIP WHITTMANN
STONE, PIGMAN FIRM
546 CARONDELET STREET
NEW ORLEANS, LA 70130-6097

RE: GORMAN VS SWAGGART

Dear Mr. Whittmann &/or Ms. Pilie',

This correspondence will serve to confirm our anticipated conversation of December 27, 1988 as I expect to make the call to further confirm this letter and reiterate our earlier request for the audio tapes in Reverand Swaggart's deposition.

As explained, the audio tapes are to be used by the reporter in proofing the transcript portion of the deposition. The audio tape is simply a tool to ensure an accurate translation of the testimony given during the deposition.

Upon receipt of same, we will commence transcribing the deposition.

For the record I feel the necessity to state that I am extremely disappointed in the manner which the tapes were obtained. We were advised that the tapes would be put in your safe for the evening for "safekeeping". The tapes were not returned the following day.

As an officer of the court, our sole interest is to provide all parties with a verbatim record as we have absolutely no interest in the ultimate outcome of this case.

We have executed a none-disclosure statement at your request and we fully intend to abide by same. I requested a copy of the executed statement at the time of signing same; however, this has not been provided to us at the time of this writing.

Your earliest attention to this request will be greatly appreciated.

Yours Truly,

/s/ Nat Douget
NATHAN DOUGET
Certified Shorthand Reporter
Legal Video Technician

Mr. Hunter W. Lundy
Lundy and Dwight
One Lakeside Plaza
Lake Charles, LA 70601

cc: All counsel of record (please see attached)

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

NO. 87-5289 DIVISION "K" DOCKET NO.

DAVID V. ADLER, TRUSTEE IN BANKRUPTCY, *IN THE MATTER OF MARVIN E. GORMAN AND VIRGINIA A. GORMAN, CASE NO. 04024-K* AND *IN THE MATTER OF MARVIN GORMAN MINISTRIES, INC., FORMERLY WHO CARES MINISTRIES, INC., CASE NO. 04025-K*

VERSUS

JIMMY SWAGGART AND
JIMMY SWAGGART MINISTRIES, INC., ET AL

FILED:_____ _____
DEPUTY CLERK

STATE OF LOUISIANA

PARISH OF CALCASIEU

AFFIDAVIT

BEFORE ME, the undersigned Notary Public, duly commissioned and qualified in and for the aforementioned state and parish, did personally appear, HUNTER W. LUNDY, who, after being duly sworn, did depose and say that:

He is co-counsel of record for David Adler, Marvin Gorman and Marvin Gorman Ministries, Inc.;

He, in conjunction with co-counsel, drafted the Motion for Contempt and/or Sanctions and the Memorandum in Support thereof; and

He is attorney for the plaintiff that questioned the defendants, Cecil Janway and Jimmy Swaggart, on December 15 and 16, 1988, and December 20 and 21, 1988, respectively and that the statements made with respect to their testimony in the Motion for Contempt and/or for Sanctions and in the Memorandum Brief in Support thereof are true to the best of his memory, knowledge and belief, as well as the allegations made in the Motion and Memorandum.

/s/ Hunter W. Lundy
HUNTER W. LUNDY

SWORN TO AND SUBSCRIBED before me, Notary, this 9 day of January, 1989, at Lake Charles, Louisiana.

/s/ David F. Dwight
NOTARY PUBLIC

CIVIL DISTRICT COURT FOR THE
PARISH OF ORLEANS

STATE OF LOUISIANA

NO. 87-5289 DIVISION "K" DOCKET NO.

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VERSUS

JIMMY SWAGGART AND
JIMMY SWAGGART MINISTRIES, INC., ET AL

FILED:_____ _____
DEPUTY CLERK

MEMORANDUM BRIEF IN SUPPORT OF MOTION FOR CONTEMPT AND/OR FOR SANCTIONS

(Filed January 10, 1989)

Article 224 of the Louisiana Code of Civil Procedure reads in part:

> A constructive contempt of court is any contempt other than a direct one. Any of the following acts constitutes a constructive contempt of court:
>
> (2) willful disobedience of any lawful judgment, order, mandate, writ or process of the court;
>
> (4) deceit or abuse of the process or procedure of the court by a party to an action or proceeding or by his attorney; and
>
> (10) any other act or omission punishable by law as a contempt of court or intended to obstruct or interfere with the orderly administration of justice, or to impair the dignity of the court or respect for its authority, and which is not a direct contempt.

Prior to January 1, 1989, Article 863 of the Louisiana Code of Civil Procedure read as follows:

> Every pleading of a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose address shall be stated. Any party that is not represented by an attorney shall sign his pleadings and state his address..
>
> Pleadings need not be verified, or accompanied by affidavit or certificate, except as otherwise provided by law, but the signature of an attorney constitutes a certificate by him that he has read the pleadings; that to the best of his knowledge, information and belief, there is good ground to support it; and that it is not interposed for delay.

Article 863 as amended effective January 1, 1989, reads in part as follows:

> (b) Pleadings need not be verified or accompanied by affidavit or certificate, except as otherwise provided by law, but the signature of an attorney or party shall constitute a certification by him that he has read the pleading; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact; that it is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law; and that it is not interposed for an improper purpose, such as to harass or to cause unnecesary delay or needless increase in the cost of litigation.
>
> (d) If, upon motion of any party or upon its own motion, the court determines that a certification has been made in violation of the provisions of this Article, the court shall impose upon the person who made the certification or the represented party, or both, an appropriate sanction which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the

filing of the pleading, including a reasonable attorney's fees.

Article 3.1 of Louisiana Supreme Court Rules of Professional Conduct, effective January 1, 1989, reads as follows:

Rule 3.1 Meritorious Claims and Contentions

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so in good faith, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceedings as to require that every element of the case be established.

Article 3.2 reads as follows:

Rule 3.2 Expediting Litigation

A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

Article 3.3 reads as follows:

Rule 3.3 Candor Toward the Tribunal

(a) A lawyer shall not knowingly:

(1) make a false statement of material fact or law to a tribunal;

(2) conceal or knowingly fail to disclose that which he is required by law to reveal; however, if a lawyer discovers that his client has perpetrated a fraud on a tribunal, shall promptly call on his client to rectify same and, if the client shall refuse to do so or be unable to do so, the lawyer shall reveal the fraud to the affected person or tribunal;

(3) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to

be directly adverse to the position of the client and not disclosed by opposing counsel; or

(4) offer evidence that the lawyer knows to be false. If a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall take reasonable remedial measures.

(b) The duties stated in paragraph (a)(1) and (3) continue to the end of the hearing or proceeding. The duties stated in paragraph (a)(2) and (4) are limited in time and are subject to the provisions of Rule 1.6.

(c) A lawyer may refuse to offer evidence that the lawyer reasonably believes is false.

(d) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts ~~known~~ to the lawyer which will enable the tribunal to make an informed decision, whether or not the facts are adverse.

Article 3.4 reads as follows:

Rule 3.4 Fairness to Opposing Party and Counsel

A lawyer shall not:

(a) unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act;

(b) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;

(c) knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists;

(d) in pretrial procedure, make a frivolous discovery request or fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party;

(e) in trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the crediblity of a witness, the culpability of a civil litigant or the guilt or innocence of an accused; or

(f) request a person other than a client to refrain from voluntarily giving relevant information to another party unless:

(1) the person is a relative or an employee or other agent of a client; and

(2) the lawyer reasonably believes that the person's interests will not be adversely affected by refraining from giving such information.

As better stated in the Motion and attachments, as well as revealed by the record itself, the defendants filed a volume of Exceptions in this case which apparently by Mr. Wittmann's letter of March 1, 1987, defendant's counsel discussed before filing the same. Beyond their "wildest dreams" did defense counsel believe the court would sustain the majority of Exceptions. The Matthew 18 theory was derived by Treeby and Indest shortly before the morning of the court's hearing on the Exceptions on July 15, 1987, and the court accepting counsel's representations in good faith felt that there was not subject matter jurisdiction. Shortly thereafter, all the defendants followed with the same argument, knowing at all time that there was no Assemblies of God belief that this was their obligation and that their conduct was in furtherance of their scriptural belief. As indicated in the deposition of Cecil Janway, he mailed out letters to answer questions. As indicated in Jimmy Swaggart's deposition, he knew

nothing about Matthew 18 and his philosophy was to cover the sin of brother rather than disclose it. However, as the court can take judicial notice, Jimmy Swaggart did not even follow his own philosophy in this case.

Accordingly, the defendants have violated Article 863 of the Louisiana Code of Civil Procedure, as well as Rules 3.1 and 3.3 of the Louisiana Supreme Court Rules of Professional Conduct is misleading the court and/or concealing their clients' true beliefs.

Mr. Peter Feringa of the Chaffe, McCall firm has repeatedly made attempts at the last minutes during proceedings in the trial court, the Fourth Circuit Court of Appeals, depositions after great expenses have been incurred by all parties, particularly the plaintiff, to delay the proceedings, to harass the plaintiff and to cause unnecessary delay and needless increase in the cost of this litigation. Furthermore, Mr. Feringa had the audacity to file an *ex parte* motion for the plaintiff to post a security bond on the eve of Mr. Treeby's deposition and just two weeks prior to his client's, Micheal Indest, deposition and tell the court a bond is needed because of the extreme expense plaintiff is causing defense counsel. All of such actions take in the eleventh hour by Mr. Peter Feringa of Chaffe, McCall without so much as the courtesy of a telephone call to either of plaintiff's counsel so that the matter could be discussed in a effort to eliminate unnecessary costs and expenses. The court can only assume, however, since Stone, Pigman's firm is co-counsel for Michael Indest, Lakeview Christian Center and William Treeby, that they are also a party to these devious actions. Moreover, as indicated in the Motion, defendants

have objected to discovery, failed to comply with discovery, and made every effort possible to increase the cost of litigation to plaintiff. It was obvious in the conference with the court on January 5, 1989, that defense counsel wants each deposition to be completed to force plaintiff to file motions to compel for each individual party defendant. The above described conduct all has been in violation of Article 863 of the Louisiana Code of Civil Procedure, Article 224 of the Louisiana Code of Civil Procedure and Rules 3.1, 3.2, 3.3 and 3.4 of Louisiana Supreme Court Rules on Professional Conduct.

For each and all the foregoing reasons, plaintiff respectfully requests this court to award plaintiff's reasonable attorney's fees and costs in the amount of FIFTY THOUSAND AND NO/100 ($50,000.00) DOLLARS for having to defend frivolous exceptions, motions, and duplicate efforts for discovery as a result of the above conduct.

Respectfully submitted,

Lundy & Dwight
BY: Hunter W. Lundy
HUNTER W. LUNDY
P. O. Box 3009
Lake Charles, LA 70602
(318) 439-0707

Tomy Dee Frasier
Frasier & Frasier
1700 S.W. Boulevard
Tulsa, Oklahoma 74101
(908) 584-4724

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing has been forwarded to all counsel of record by depositing a copy of the same in the United States mail, postage prepaid and properly addressed.

Lake Charles, Louisiana, this 9 day of January, 1989.

/s/ Hunter W. Lundy
HUNTER W. LUNDY

012

Please Serve:

All defendants through their
attorneys of record

CIVIL DISTRICT COURT FOR THE
PARISH OF ORLEANS

STATE OF LOUISIANA

NO. 87-5289 DIVISION "K" DOCKET NO.

DAVID V. ADLER, TRUSTEE IN BANKRUPTCY, *IN THE MATTER OF MARVIN E. GORMAN AND VIRGINIA A. GORMAN, CASE NO. 04024-K* AND *IN THE MATTER OF MARVIN GORMAN MINISTRIES, INC., FORMERLY WHO CARES MINISTRIES, INC., CASE NO. 04025-K*

VERSUS

JIMMY SWAGGART AND
JIMMY SWAGGART MINISTRIES, INC., ET AL

FILED:_____ _____
DEPUTY CLERK

ORDER

(Filed January 10, 1989)

IT IS HEREBY ORDERED that defendants in the above captioned matter appear on the ___ day of ___, 1989, at ___ o'clock ___.m. to show cause why plaintiff's Motion for Contempt and/or for Sanctions should not be sustained.

SO ORDERED this ___ day of ___, 1989, at New Orleans, Louisiana.

_____
RICHARD J. GANUCHEAU
District Judge

Please Serve:

All defendants through
their attorneys of record

013

Supreme Court, U.S.
FILED
FEB 17 1989
JOSEPH F. SPANIOL, JR.
CLERK

No. 88-1058

In The

Supreme Court of the United States

October Term, 1988

WILLIAM D. TREEBY AND
STATE FARM FIRE AND CASUALTY COMPANY,

Petitioners,

vs.

DAVID V. ADLER, TRUSTEE IN BANKRUPTCY, *IN THE MATTER OF MARVIN E. GORMAN AND VIRGINIA A. GORMAN, CASE NO. 04024* AND *IN THE MATTER OF MARVIN GORMAN MINISTRIES, INC., FORMERLY WHO CARES MINISTRIES, INC., CASE NO. 04025-K,*

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT FOR THE STATE OF LOUISIANA

PETITIONERS' REPLY BRIEF

E. Ross Buckley, Jr.
Michele D. Ahlers
Blue, Williams & Buckley
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(504) 831-4091

Counsel of Record for Petitioners

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
or call collect (402) 342-2831

16 pp

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PETITIONERS' REPLY BRIEF

William D. Treeby and State Farm Fire and Casualty Company respectfully submit this reply brief directed to respondents' request that this Court enter sanctions pursuant to Rule 11 of the Federal Rules of Civil Procedure against petitioners herein.

———o———

ARGUMENT

In respondents' conclusion at pages 10 and 11 of the Brief in Opposition, there is a request for the Supreme Court to sanction petitioners under Rule 11 of the Federal Rules of Civil Procedure. Petitioners, herein, urge this court to exclude any consideration of this request for Rule 11 sanctions. The reasons for petitioners' request are set forth below.

(1) The United States Supreme Court has no original jurisdiction over a Motion for Contempt and/or for Sanctions. The United States Constitution, Article 3, Subsections 1 and 2; 28 U.S.C.A. Sub-section 1251; United States Supreme Court Rules 9, 17, 19, 26, and 27.

(2) There has been no final judgment by any court of the State of Louisiana regarding the Motion for Contempt and/or for Sanctions appended to respondents' brief in opposition. Therefore, the United States Supreme Court has no appellate jurisdiction over this matter. 28 U.S.C.A. Sub-section 1257.

(3) Respondents' brief is not a proper procedural device for raising this issue. United States Supreme Court Rules 9, 17, 19, 26 and 27.

(4) Federal Rule of Civil Procedure 11 is not a rule of the United States Supreme Court. It is a rule of the United States District Courts. This litigation was brought in the Civil District Court for the Parish of Orleans, a state court, and was not removed to the United States District Court for the Eastern District of Louisiana. Therefore, the Federal Rules of Civil Procedure do not apply to respondents' motion for contempt and/or for sanctions. United States Constitution Article 3, Sub-sections 1 and 2; 28 U.S.C.A. Sub-sections 1251 and 1257; United States Supreme Court Rules 9, 17, 19, 26, and 27.

—o—

CONCLUSION

From the above, it is clear that respondents' attempt to seek sanctions in the United States Supreme Court is improper. Federal Rule of Civil Procedure 11 does not apply. Moreover, this court does not currently have jurisdiction over the purported issues raised in the motions for contempt and/or for sanctions filed in the Civil District Court for the Parish of Orleans. Therefore, this court should not consider any argument by respondents' advocating sanctions and all reference thereto should be treated as if these allegations had been stricken from the text of their brief in opposition.

Respectfully submitted,

E. Ross Buckley, Jr.
Michele D. Ahlers
Blue, Williams & Buckley
3421 N. Causeway Boulevard
Suite 901
Metairie, Louisiana 70002
(504) 831-4091

Counsel of Record for Petitioners

APPENDIX

CONSTITUTION OF THE UNITED STATES
ART. 3 §§ 1 & 2
ARTICLE III

§ 1. Judicial power; tenure of office

Section 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behavious, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

§ 2. Jurisdiction

Section 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;— between a State and Citizens of another State;— between citizens of different States;—between citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be a Party, the supreme Court shall have original Jurisdiction.

In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

§ 1251. Original jurisdiction

(a) The Supreme Court shall have original and exclusive jurisdiction of all controversies between two or more States.

(b) The Supreme Court shall have original but not exclusive jurisdiction of:

(1) All actions or proceedings to which ambassadors, other public ministers, consuls, or vice consuls of foreign states are parties;

(2) All controversies between the United States and a State;

(3) All actions or proceedings by a State against the citizens of another State or against aliens.

(As amended Sept. 30, 1978, Pub.L. 95-393, § 8(b), 92 Stat. 810.)

§ 1257. State courts; appeal; certiorari

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

(1) By appeal, where is drawn in question the validity of a treaty or statute of the United States and the decision is against its validity.

(2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.

(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States.

For the purposes of this section, the term "highest court of a State" includes the District of Columbia Court of Appeals.

(As amended July 29, 1970, Pub.L. 91P-358, Title I, § 172-(a)(1), 84 Stat. 590.)

PART III—ORIGINAL JURISDICTION

Rule 9. Procedure in original actions

.1. This Rule applies only to actions within the Court's original jurisdiction under Article III of the Constitution of the United States. Original applications for writs in aid of the Court's appellate jurisdiction are governed by Part VII of these Rules.

.2. The form of pleadings and motions in original actions shall be governed, so far as may be, by the Federal Rules of Civil Procedure and in other respects those Rules,

where their application is appropriate, may be taken as a guide to procedure in original actions in this Court.

.3. The initial pleading in any original action shall be prefaced by a motion for leave to file such pleading, and both shall be printed in conformity with Rule 33. A brief in support of the motion for leave to file, which shall comply with Rule 33, may be filed with the motion and pleading. Sixty copies of each document, with proof of service as prescribed by Rule 28, are required, except that, when an adverse party is a State, service shall be made on the Governor and Attorney General of such State. See Rule 28.1.

.4. The case will be placed upon the original docket when the motion for leave to file is filed with the Clerk. The docket fee must be paid at that time, and the appearance of counsel for the plaintiff entered.

.5. Within 60 days after receipt of the motion for leave to file and allied documents, any adverse party may file, with proof of service as prescribed by Rule 28, 60 printed copies of a brief in opposition to such motion. The brief shall conform to Rule 33. When such brief in opposition has been filed, or when the time within which it may be filed has expired, the motion, pleading, and briefs will be distributed to the Court by the Clerk. The Court may thereafter grant or deny the motion, set it down for argument, or take other appropriate action.

.6. Additional pleadings may be filed, and subsequent proceedings had, as the Court may direct. See Rule 28.1.

.7. A summons issuing out of this Court in any original action shall be served on the defendant 60 days before

the return day set out therein; and if the defendant, on such service, shall not respond by the return day, the plaintiff shall be at liberty to proceed *ex parte.*

.8. Any process against a State issued from the Court in an original action shall be served on the Governor and Attorney General of such State.
(As amended Oct. 21, 1980, eff. Nov. 21, 1980.)

PART V—JURISDICTION ON WRIT OF CERTIORARI

Rule 17. Considerations governing review on certiorari

.1. A review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered.

(a) When a federal court of appeals has rendered a decision in conflict with the decision of another federal court of appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.

(b) When a state court of last resort has decided a federal question in a way in conflict with the decision of another state court of last resort or of a federal court of appeals.

(c) When a state court or a federal court of appeals has decided an important question of federal

law which has not been, but should be, settled by this Court, or has decided a federal question in a way in conflict with applicable decisions of this Court.

.2. The same general considerations outlined above will control in respect of petitions for writs of certiorari to review judgments of of[1] the United States Court of Appeals for the Federal Circuit, the United States Court of Military Appeals, and of any other court whose judgments are reviewable by law on writ of certiorari.

(As amended July 5, 1984, eff. Aug. 1, 1984.)

Rule 19. Review on certiorari—how sought—parties

.1. A party intending to file a petition for certiorari, prior to filing the case in this Court or at any time prior to action by this Court on the petition may request the clerk of the court possessed of the record to certify it, or any part if it, and to provide for its transmission to this Court, but the filing of the record in this Court is not a requisite for docketing the petition. If the petitioner has not done so, the respondent may request such clerk to certify and transmit the record or any part of it. Thereafter, the Clerk of this Court or any party to the case may request that additional parts of the record be certified and transmitted to this Court. Copies of all requests for certification and transmission shall be sent to all parties to the proceeding. Such requests to certify the record prior to action by the Court on the petition for certiorari, however, should not be made as a matter of course but only when the record is deemed essential to a proper understanding of the case by this Court.

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[1]So in original.

.2. When requested to certify and transmit the record, or any part of it, the clerk of the court possessed of the record shall number the documents to be certified and shall transmit with the record a numbered list of the documents, identifying each with reasonable definiteness. If the record, or stipulated portions thereof, has been printed for the use of the court below, such printed record plus the proceedings in the court below may be certified as the record unless one of the parties or the Clerk of this Court otherwise requests. The provisions of Rule 13.3 with respect to original papers shall apply to all cases sought to be reviewed on writ of certiorari.

.3. Counsel for the petitioner shall enter an appearance, pay the docket fee, and file, with proof of service as provided by Rule 28, 40 copies of a petition which shall comply in all respects with Rule 21. The case then will be placed on the docket. It shall be the duty of counsel for the petitioner to notify all respondents, on a form supplied by the Clerk, of the date of filing and of the docket number of the case. Such notice shall be served as required by Rule 28.

.4. Parties interested jointly, severally, or otherwise in a judgment may join in a petition for a writ of certiorari therefrom; or any one or more of them may petition separately; or any two or more of them may join in a petition. When two or more cases are sought to be reviewed on certiorari to the same court and involve identical or closely related questions, it will suffice to file a single petition for writ of certiorari covering all the cases.

.5. Not more than 30 days after receipt of the petition for certiorari, counsel for a respondent wishing to file a

cross-petition that would otherwise be untimely shall enter an appearance, pay the docket fee, and file, with proof of service as prescribed by Rule 28, 40 copies of a cross-petition for certiorari, which shall comply in all respects with Rule 21. The cross-petition will then be placed on the docket subject, however, to the provisions of Rule 20.5. It shall be the duty of counsel for the cross-petitioner to notify the cross-respondent on a form supplied by the Clerk of the date of docketing and of the docket number of the cross-petition. Such notice shall be served as required by Rule 28. A cross-petition for certiorari may not be joined with any other pleading. The Clerk shall not accept any pleadings so joined. The time for filing a cross-petition may not be extended.

.6. All parties to the proceeding in the court whose judgment is sought to be reviewed shall be deemed parties in this Court, unless the petitioner shall notify the Clerk of this Court in writing of petitioner's belief that one or more of the parties below has no interest in the outcome of the petition. A copy of such notice shall be served on all parties to the proceeding below and a party noted as no longer interested may remain a party here by notifying the Clerk, with service on the other parties, that he has an interest in the petition. All parties other than petitioners shall be respondents, but any respondent who supports the position of a petitioner shall meet the time schedule for filing papers which is provided for that petitioner, except that any response by such respondent to the petition shall be filed within 20 days after receipt of the petition. The time for filing such response may not be extended.

PART VII—JURISDICITION TO ISSUE EXTRAORDINARY WRITS

Rule 26. Considerations governing issuance of extraordinary writs

The issuance by the Court of any extraordinary writ authorized by 28 U.S.C. § 1651(a) is not a matter of right, but of discretion sparingly exercised. To justify the granting of any writ under that provision, it must be shown that the writ will be in aid of the Court's appellate jurisdiction, that there are present exceptional circumstances warranting the exercise of the Court's discretionary powers, and that adequate relief cannot be had in any other form or from any other court.

Rule 27. Procedure in seeking an extraordinary writ

.1. The petition in any proceeding seeking the issuance by this Court of a writ authorized by 28 U.S.C. §§ 1651(a), 2241, or 2254(a), shall comply in all respects with Rule 33, except that a party proceeding *in forma pauperis* may proceed in the manner provided in Rule 46. The petition shall be captioned "In re (name of petitioner)." All contentions in support of the petition shall be included in the petition. The case will be placed upon the docket when 40 copies, with proof of service as prescribed by Rule 28 (subject to paragraph .3(b) of this Rule), are filed with the Clerk and the docket fee is paid. The appearance of counsel for the petitioner must be entered at this time. The petition shall be as short as possible, and in any event may not exceed 30 pages.

.2 (a) if the petition seeks issuance of a writ of prohibition, a writ of mandamus, or both in the alternative, it

shall identify by names and office or function all persons against whom relief is sought and shall set forth with particularity why the relief sought is not available in any other court. There shall be appended to such petition a copy of the judgment or order in respect of which the writ is sought, including a copy of any opinion rendered in that connection, and such other papers as may be essential to an understanding of the petition.

(b) The petition shall follow, insofar as applicable, the form for the petition for writ of certiorari prescribed by Rule 21. The petition shall be served on the judge or judges to whom the writ is sought to be directed, and shall also be served on every other party to the proceeding in respect of which relief is desired. The judge or judges, and the other parties, within 30 days after receipt of the petition, may file 40 copies of a brief or briefs in opposition thereto, which shall comply fully with Rules 22.1 and 22.2, including the 30-page limit. If the judge or judges concerned do not desire to respond to the petition, they shall so advise the Clerk and all parties by letter. All persons served pursuant to this paragraph shall be deemed respondents for all purposes in the proceedings in this Court.

.3 (a) If the petition seeks issuance of a writ of habeas corpus, it shall comply with the requirements of 28 U.S.C. § 2242 and in particular with the requirement in the last paragraph there of that it state the reasons for not making application to the district court of the district in which the petitioner is held. If the relief sought is from the judgment of a state court, the petition shall set forth specifically how and wherein the petitioner has exhausted his remedies in the state courts or otherwise comes within the

provisions of 28 U.S.C. §2254(b). To justify the granting of a writ of habeas corpus, it must be shown that there are present exceptional circumstances warranting the exercise of the Court's discretionary powers and that adequate relief cannot be had in any other form or from any other court. Such writs are rarely granted.

(b) Proceedings under this paragraph .3 will be *ex parte,* unless the Court requires the respondent to show cause why the petition for a writ of habeas corpus should not be granted. If a response is ordered, it shall comply fully with Rules 22.1 and 22.2, including the 30-page limit. Neither denial of the petition, without more, nor an order of transfer under authority of 28 U.S.C. § 2241(b), is an adjudication on the merits, and the former action is to be taken as without prejudice to a further application to any other court for the relief sought.

.4. If the petition seeks issuance of a common-law writ of certiorari under 28 U.S.C. § 1651(a), there may also be filed, at the time of docketing, a certified copy of the record, including all proceedings in the court to which the writ is sought to be directed. However, the filing of such record is not required. The petition shall follow, insofar as applicable, the form for a petition of certiorari prescribed by Rule 21, and shall set forth with particularity why the relief sought is not available in any other court, or cannot be had through other appellate process. The respondent, within 30 days after receipt of the petition, may file 40 copies of a brief in opposition, which shall comply fully with Rules 22.1 and 22.2, including the 30-page limit.

.5. When a brief in opposition under paragraphs .2 and .4 has been filed, or when a response under paragraph .3 has been ordered and filed, or when the time within which it may be filed has expired, or upon an express waiver of the right to file, the papers will be distributed to the Court by the Clerk.

.6. If the Court orders the cause set down for argument, the Clerk will notify the parties whether additional briefs are required, when they must be filed, and, if the case involves a petition for common-law certiorari, that the parties shall proceed to print a joint appendix pursuant to Rule 30.